



NO. 93-180

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1993

BOCA GRANDE CLUB, INC.,

Petitioner,

v.

FLORIDA POWER & LIGHT COMPANY, INC.

Respondent.

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

JOINT APPENDIX

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Petition for Certiorari Filed August 4, 1993
Certiorari Granted September 28, 1993

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CONTENTS OF APPENDIX

	Page
Relevant Docket Entries	1
Complaint.....	5
Answer, Affirmative Defenses and Claim of Florida Power & Light Company	10
Answer and Claim of the O'Day Corporation.....	16
Answer and Affirmative Defenses to Claim of Florida Power & Light Company	21
Answer and Affirmative Defenses to Claim of the O'Day Corporation	24
Answer, Affirmative Defenses and Claim of Jonathan Richards, et al	27
Answer and Affirmative Defenses to Claim for Jonathan Richards, et al.....	32
Stipulation and Joint Motion for Dismissal	37
Memorandum of Law in Support of Joint Motions	40
Florida Power and Light Company's Memorandum in Response to Stipulation and Joint Motion for Dismissal	45
Order Granting the Dismissal of Claims.....	48

Motion for Summary Judgment as to Claims of Florida Power & Light Company and the O'Day Corporation	51
Full and Complete General Release; Exhibit A to Motion for Summary Judgment	63
Memorandum of Law in Opposition to the Boca Grande Club's Motion for Summary Judgment	73
Order Granting Summary Judgment	88
Judgment of District Court	91
Judgment of Court of Appeals and Opinion	92

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA (TAMPA)**

CIVIL DOCKET FOR CASE #: 88-CIV-1636

BOCA GRANDE CLUB, et al

v.

POLACKWICH, et al

FILED: 10/20/88

Relevant Docket Entries

10/20/88	1	COMPLAINT filed (grk) [Entry date 10/31/91]
12/2/88	10	ANSWER and affirmative defenses to Complaint and CLAIM by Florida Power/Light (grk) [Entry date 10/31/91]
12/2/88	11	ANSWER to Complaint and CLAIM by O'Day Corporation (grk) [Entry date 10/31/91]
12/12/88	12	ANSWER and Affirmative Defenses to Claim of Florida Power and Light Company by Boca Grande Club (grk) [Entry date 10/31/91]
12/12/88	13	ANSWER and Affirmative Defenses to Claim of the O'Day Corporation by Boca Grande Club (grk) [Entry date 10/31/91]
12/30/88	16	ANSWER and Affirmative Defenses to Complaint and CLAIM by Legal Guardian of Robert Nathan Polackwich, Eleanor A. Polackwich, Alphonsus J. Polackwich, Jonathan Richards, deceased, Stephanie Polackwich, Individually and as Personal Representative of the Estate of Jonathan Richards, deceased, Robert

Polackwich, deceased, Alan Polackwich, as Personal Representative of the Estate of Robert J. Polackwich, deceased. (grk) [Entry date 10/31/91]

- 1/13/89 18 ANSWER to Claim of Claimants by Boca Grande Club (grk) [Entry date 10/31/91]
- 12/14/90 163 STIPULATION and Joint Motion for dismissal by parties. Proposed Order of Dismissal attached. (grk) [Entry date 11/05/91]
- 12/14/90 164 MEMORANDUM by Boca Grande Club in support of [163-1] dismiss/dismissal stipulation (grk) [Entry date 11/05/91].
- 12/27/90 167 RESPONSE by Florida Power/Light to [163-1] dismiss/dismissal stipulation (grk) [Entry date 11/05/91]
- 3/13/91 173 ORDER that the Joint Motion for dismissal is GRANTED, and all claims of the stipulating Claimants against the Plaintiff only are dismissed with prejudice. Further prosecution of this limitation action is hereby STAYED until the state court lawsuits have been terminated. The only exception is that Plaintiff may, within 45 days from the date of this Order, file motions for summary judgment as to claims of Florida Power and Light and the O'Day Corporation which seek indemnity and contribution. Florida Power and O'Day Corporation will respond to any such motions filed by Plaintiff in accordance with Local Rules. The Order on motion for Injunction and Injunction (#55) is hereby LIFTED as to each of the stipulating Claimants and each stipulating Claimant is free to pursue whatever actions

he or she may have against parties other than Boca Grande Club. All pending discovery motions are DENIED. The entry of this Order does not make any determination as to the good faith of the settlement between Plaintiff and stipulating Claimants. Boca Grande and stipulating Claimant shall bear own costs. (Signed by Judge Elizabeth A. Kovachevich) (grk) [Entry date 11/06/91] [Edit date 11/06/91]

- 4/29/91 174 MOTION by Boca Grande Club for summary judgment as to claims of Florida Power & Light Company and the O'Day Corporation Exhibits attached. (grk) [Entry date 11/06/91]
- 5/16/91 178 MEMORANDUM by Florida Power/Light in opposition to [174-1] motion for summary judgment as to claims of Florida Power & Light Company and the O'Day Corporation (grk) [Entry date 11/06/91]
- 3/6/92 184 ORDER granting [174-1] motion for summary judgment as to claims of Florida Power & Light Company and both the indemnity and contribution claims brought by Florida Power and Light Company, Inc. against Boca Grande Club, Inc. are barred by Boca Grande's settlement with the estates of the decedents. The case is ADMINISTRATIVELY CLOSED pending the outcome of the bankruptcy proceedings regarding O'Day Corporation. Boca Grande Club, Inc. shall report to the Court upon the conclusion of the bankruptcy proceedings. (Signed by Judge William J. Castagna) (cr) [Entry date 03/27/92]
- 3/27/92 185 JUDGMENT that Boca Grande's motion for summary judgment as to the claims of Florida Power

and Light Company is granted and both the indemnity and contribution claims brought by Florida Power and Light Company, Inc. against Boca Grande Club, Inc. are barred by Boca Grande's settlement with the estate of the decedents. (cr) MFR Number 102:1499 (cr)

7/19/93 196 JUDGEMENT OF USCA (certified copy) Re: [187-1] appeal vacating judgment and remanding case to district court for further proceedings in accordance with opinion. Mandate date: 7/15/93 USCA EOD: 5/12/93 (gw) [Entry date 07/21/93]

**UNITED STATES COURT OF APPEALS
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**CASE NUMBER: 88-1636-Civ-T-17A
IN ADMIRALTY**

IN THE MATTER OF THE COMPLAINT

OF

**BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION OF
LIABILITY AS OWNER OF A 16' PRINDLE
CATAMARAN SAILING VESSEL, HULL
NO. SUR06214M82E**

COMPLAINT

Boca Grande Club, Inc. as owner of a 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E as and for its complaint in a cause of exoneration from or limitation of liability, civil and maritime, alleges upon information and belief as follows:

1. This is an admiralty and maritime action within the meaning of 28 USCA §1333 and Rule 9(h), Federal Rules of Civil Procedure.

2. Plaintiff, Boca Grande Club, Inc., was at all times material hereto a corporation organized and existing under the laws of the State of Florida, and was engaged in the business, among others, of owning and renting to its members 16' Prindle Catamaran sailing vessels.

3. At all times material hereto, Boca Grande Club, Inc. was the owner of a 16' Prindle Catamaran sailing vessel, Hull No. SUR06214M82E.

4. The 16' Prindle Catamaran sailing vessel, Hull No. SUR06214M82E was a twin hulled fiberglass sailing vessel 16' in length, built at Santa Ana, California in 1982. At all times herein mentioned, the 16' Prindle Catamaran Sailing Vessel Hull No. SUR06214M82E was in all respects seaworthy, properly and efficiently supplied, equipped and furnished, well and sufficiently fitted with suitable machinery, tackle, apparel, appliances, et cetera, all in good order and condition except as otherwise specifically stated herein, and suitable for the business for which it was built.

5. On or about Saturday, April 23, 1988, at approximately 1200, Robert Polackwich, who was a member of the Boca Grande Club, Inc., rented the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E for use during a private pleasure voyage. Accompanying Robert Polackwich on the private pleasure voyage was his stepson, Jonathan Richards.

6. At approximately 1400 on Saturday, April 23, 1988, in the vicinity of certain navigable waters commonly known as Gasparilla Pass, the mast of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E, being operated as aforesaid, came into contact with high voltage electric power/transmission lines owned, operated and maintained by Florida Power & Light Corporation. As a result of the contact, Robert Polackwich and Jonathan Richards were electrocuted.

7. The contact between the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E's mast and the electric power/transmission lines that resulted in the deaths of Robert Polackwich and Jonathan Richards was solely caused by the neglect, fault, and want of care of the operator of said vessel, and/or the neglect, fault and want of care of Florida Power & Light Corporation and/or its failure to maintain its electric power/transmission lines at the height permitted by a permit for such lines granted by the United States Army Corps of Engineers.

8. The contact between the mast of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E and the electric

power/transmission lines that caused the deaths of Robert Polackwich and Jonathan Richards was not caused or due to any fault, neglect or want of care on the part of Boca Grande Club, Inc., nor was said casualty caused or occasioned by any defect or condition of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E.

9. The contact between the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E's mast and the electric power/transmission lines which resulted in the deaths of Robert Polackwich and Jonathan Richards was without the privity or knowledge of Boca Grande Club, Inc.

10. The personal representative of Robert Polackwich commenced a lawsuit against Boca Grande Club, Inc., among others, in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Case No. CL88-5328 AI. On June 9, 1988, copies of a Petition For Temporary Injunction, Motion For Emergency Hearing, and a Notice Of Hearing were furnished to counsel for Boca Grande Club, Inc.

11. Having learned that the personal representative of Robert Polackwich seeks to recover damages against the owner of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E, Boca Grande Club, Inc., Plaintiff herein, has commenced this action to obtain exoneration from any liability as owner of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E to the value of said vessel following the April 23, 1988 contact between its mast and the electric power/transmission lines, all in accordance with the provisions of Title 46, United States Code, Sections 181, et seq.

12. There are no demands, unsatisfied liens, or claims of liens against the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E, or Plaintiff, arising out of the April 23rd contact between the vessel's mast and the electric power/transmission lines that caused the deaths of Robert Polackwich and Jonathan

Richards, or any suits pending against the vessel or its owner, so far as is known to Plaintiff.

13. This Complaint is filed within six months after the date Plaintiff first received written notice evidencing an intent to make a claim against the owner of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E as a result of the above described casualty.

14. The value of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E following the above described casualty does not exceed the sum of \$1,000.00. At the time of the casualty, there was no freight pending within the meaning of the applicable statutes. Attached hereto as Exhibit A is an Affidavit of Value of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E following the casualty. Plaintiff asserts that the aggregate value of its interest in the vessel so stated is in compliance with the statutes of the United States.

15. Boca Grande Club, Inc. elects to file herein an Ad Interim Stipulation with good and sufficient surety, as required by the rules of this Court and the aforementioned statutes of the United States, in the amount of \$1,000.00, with interest thereon at the rate of 6% per annum from the date thereof, for the payment of Plaintiff's aggregate interest in the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E into Court.

16. All and singular the premises are true and correct and within the exclusive admiralty and maritime jurisdiction of this Court.

WHEREFORE, Boca Grande Club, Inc. prays:

1. That the Court approve its Ad Interim Stipulation as sufficient security for the payment into Court upon judgment of the amount of its interest in the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E.

2. That the Court enter an order directing the issuance of a notice citing all persons claiming any interest herein or damages for any loss or injury as a result of the contact between the mast of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E and the electric power/transmission lines on April 23, 1988, citing them to file their respective claims and their answers to this Complaint with the Clerk of the Court and to serve copies thereof upon Plaintiff, all as required by the rules of this Court.

3. That the Court enter an order prohibiting and restraining the commencement and prosecution of any suit, action or legal proceeding of any nature, kind or description whatsoever against Plaintiff except in the present proceeding in respect of any claim or claims arising out of the aforesaid contact between the mast of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E and the electric power/transmission lines.

4. That Plaintiff have such other and further relief as may appear just in the premises.

/s/ _____
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(Verification omitted in printing)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO. 88-1636-Civ-T-17A

IN THE MATTER OF THE COMPLAINT

OF

BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION OF
LIABILITY AS OWNER OF A 16' PRINDLE
CATAMARAN SAILING VESSEL, HULL
NO. SUR06214M82E

**ANSWER, AFFIRMATIVE DEFENSES AND CLAIM OF
FLORIDA POWER AND LIGHT COMPANY**

Defendant, Florida Power and Light Company, answers the Complaint for Exoneration From or Limitation of Liability previously filed by Boca Grande Club, Inc. as follows:

1. Without knowledge.
2. Without knowledge.
3. Without knowledge.
4. Denied that the 16' Prindle Catamaran sailing vessel "was in all respects seaworthy, properly and effeciently [sic] supplied, equipped and furnished, well and sufficiently fitted with suitable machinery, tackle, apparel, appliances, et cetera, all in good order and condition except as otherwise specifically stated herein, and suitable for the business for which it was built"; otherwise without knowledge.

5. Without knowledge.

6. Without knowledge.

7. Denied.

8. Denied.

9. Denied.

10. Without knowledge.

11. Admitted.

12. Without knowledge.

13. Without knowledge.

14. Without knowledge.

15. Without knowledge.

16. Admitted that such a Complaint for Exoneration From or Limitation of Liability is within the 'admiralty and maritime jurisdiction of this Court'; otherwise denied.

AFFIRMATIVE DEFENSES

Florida Power and Light Company further raises the following affirmative defenses to the Complaint for Exoneration From or Limitation of Liability:

1. The alleged accident involving contact between electric power/transmission lines and the mast of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E ("the Vessel") on April 23, 1988 was caused in whole or in part by the negligence of Plaintiff, Boca Grande Club, Inc., and its agents, servants or

employees or by the unseaworthiness of the Vessel in the following respects:

- A. The Vessel was unseaworthy; and/or
- B. Boca Grande Club, Inc. and its agents, servants or employees allowed the vessel to be operated by persons who were either improperly trained, incompetent or physically unable to properly operate the Vessel; and/or
- C. Boca Grande Club, Inc. and its agents, servants or employees failed to properly train the persons operating the Vessel regarding the proper procedures for operating the Vessel; and/or
- D. Boca Grande Club, Inc. and its agents, servants or employees failed to properly warn the persons operating the Vessel of the perils of operating the Vessel in waters with hazardous currents, shoal and shorelines near the site of the alleged accident of April 23, 1988; and/or
- E. Boca Grande Club, Inc. and its agents, servants or employees failed to properly outfit, modify or otherwise safeguard the vessel with equipment and appurtenances which would have prevented the alleged accident of April 23, 1988.

Accordingly, Florida Power and Light Company demands that the Claim for Exoneration From Liability be denied on the ground that the accident of April 23, 1988 was caused in whole or in part by the negligence and/or unseaworthiness as set forth above; and that the Claim for Limitation of Liability should be denied on the grounds that the owner of the Vessel, Boca Grande Club, Inc., was privy to and/or had knowledge of the unseaworthiness and also was negligent in failing to prevent the accident.

CLAIM

1. Florida Power and Light Company is a corporation autho-

rized to do business in the State of Florida and at all material times, owned and properly maintained certain electrical transmission lines located near certain waters west of the Boca Grande Causeway commonly known as Gasparilla Pass.

2. The Plaintiff, Boca Grande Club, Inc., is, according to its own allegations, a corporation organized and existing under the laws of the State of Florida, maintaining its business in Boca Grande, Florida, and was engaged in the business, among others, of owning and renting or otherwise permitting its members to use 16' Prindle Catamaran sailing vessels in the area alleged in the Complaint.

3. At all material times, Boca Grande Club, Inc. was the owner of a 16' Prindle Catamaran sailing vessel, Hull No. SUR06214M82E ("the Vessel").

4. On or about April 23, 1988, the Vessel was leased or rented, or otherwise provided to Robert J. Polackwich and Jonathan Richards by agents, servants or employees of Boca Grande Club, Inc. for use during a pleasure voyage in and near the navigable waters known as Gasparilla Pass. During that voyage, the Vessel allegedly contacted electrical transmission lines owned and maintained by Florida Power and Light Company.

5. Florida Power and Light Company has been named as a defendant and has been served with process in a case styled *Alan S. Polackwich, Sr., as Personal Representative of the Estate of Robert J. Polackwich, deceased, vs. Florida Power and Light Company and the O'Day Corporation*, Case No. 88-20398, Division P, in the Circuit Court for the Thirteenth Judicial Circuit of Florida. In that suit, the plaintiff seeks recovery of damages against Florida Power and Light Company for the injuries and death of Robert J. Polackwich allegedly resulting from the electrical contact of April 23, 1988.

6. Florida Power and Light Company has also been named as a defendant and has been served with process in a case styled

Stephanie J. Polackwich, as Personal Representative of the Estate of Jonathan Richards, deceased vs. Florida Power and Light Company and the O'Day Corporation, Case No. 88-20396, Division C, in the Circuit Court for the Thirteenth Judicial Circuit of Florida. In that suit, the plaintiff seeks recovery of damages against Florida Power and Light Company for the injuries and death of Jonathan Richards allegedly resulting from the electrical contact of April 23, 1988.

7. Although it vigorously asserts that the injuries and deaths of Polackwich and Richards are not in any way the result of its fault or negligence, Florida Power and Light Company specifically alleges that it is entitled to indemnity and/or contribution from Boca Grande Club, Inc., among others, for any damages for which Florida Power and Light Company may ultimately be adjudged liable in the above referenced cases. Specifically, Florida Power and Light Company asserts that Boca Grande Club, Inc. was negligent or otherwise at fault for the injuries or damages suffered by Polackwich and Richards in the following respects:

- A. Boca Grande Club, Inc. failed to provide Polackwich and Richards with a seaworthy vessel.
- B. Boca Grande Club, Inc. failed to properly instruct and/or warn Polackwich and Richards regarding the safe operation of the Vessel in the vicinity where they would reasonably be expected to sail.
- C. Boca Grande Club, Inc. failed to take proper steps to determine that Polackwich and Richards were qualified, competent and/or physically able to operate the Vessel.
- D. Boca Grande Club, Inc. failed to employ individuals capable of making such determinations.
- E. Boca Grande Club, Inc. failed to properly outfit, equip, modify or furnish the Vessel with equipment which would

have prevented the damages complained of.

8. Florida Power and Light Company reserves the right to amend this claim as further discovery and inquiry should dictate.

Accordingly, Florida Power and Light Company files its claim against Boca Grande Club, Inc. for such fees, costs, interest and damages to which it is entitled under the doctrines of contribution and/or indemnity.

/s/ _____
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(Verification and certificate of service omitted in printing)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO. 88-1636-CIV-T-17A
IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT

OF

BOCA GRANDE CLUB, INC. FOR EXONERATION FROM OR
LIMITATION OF LIABILITY AS OWNER OF A 16' PRINDLE
CATAMARAN SAILING VESSEL, HULL NO. SUR06214M82E

ANSWER AND CLAIM OF THE O'DAY CORPORATION

Claimant The O'Day Corporation ("O'Day"), by and through its undersigned attorneys, answers the complaint for exoneration from or limitation of liability of the Boca Grande Club, Inc. ("Boca Grande"), as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Without knowledge.
5. Admitted.
6. Admitted.
7. Denied.
8. Denied.

9. Denied.
10. Admitted.
11. Admitted.
12. Without knowledge.
13. Admitted.
14. Denied.
15. Admitted.

16. Admitted that this matter is exclusively within the maritime and admiralty jurisdiction of this Court. The remainder of paragraph 16 is denied.

AFFIRMATIVE DEFENSE

As a separate and complete defense, based upon its information and belief, defendant O'Day states as follows:

FIRST AFFIRMATIVE DEFENSE

For its first affirmative defense, and in further answer to the complaint, O'Day avers that (a) the fatal injuries to Robert Polackwich and Jonathan Richards occurring on April 23, 1988 were caused by the negligence of Boca Grande and its agents, servants or employees and by the unseaworthiness of the 16' Prindle Catamaran and (b) the negligence and unseaworthiness were within the privity and knowledge of Boca Grande.

THEREFORE, O'Day requests this Court to deny Boca Grande's claim for exoneration from or limitation of liability with regard to the 16' Prindle Catamaran.

CLAIM OF THE O'DAY CORPORATION

Claimant The O'Day Corporation ("O'Day"), by and through its undersigned attorneys, files this claim against petitioner Boca Grande Club, Inc. ("Boca Grande") and alleges as follows:

1. O'Day is a foreign corporation whose products are sold in the State of Florida.
2. At all material times, O'Day was the business entity that was legally responsible for the proper design, manufacture and sale of the 16' Prindle Catamaran, Hull No. SUR06204M82E.
3. At all material times, Boca Grande was the owner of the 16' Prindle Catamaran.
4. Prior to his death, Robert J. Polackwich ("Polackwich"), was a resident of Hillsborough County, Florida and conducted a professional medical practice in this District.
5. Prior to his death, Jonathan Richards ("Richards") was a resident of this District.
6. On or about April 23, 1988, Polackwich and Richards were sailing onboard the 16' Prindle Catamaran when that vessel contacted overhead power lines on the west side of the Boca Grande Causeway in Charlotte County, Florida.
7. As a result of that collision, Polackwich and Richards suffered fatal injuries.
8. Pursuant to a complaint filed in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, entitled *Alan S. Polackwich, Senior, Personal Representative of the Estate of Robert J. Polackwich deceased vs. Florida Power and Company and The O'Day Corporation*, Case No. 88-20398, which is hereto attached as Exhibit "A" the Personal Representative of Polackwich seeks damages from O'Day because of the fatal

injuries received by Polackwich on April 23, 1988.

9. Pursuant to a complaint filed in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, entitled *Stephanie J. Polackwich, as Personal Representative of the Estate of Jonathan Richards, deceased vs. Florida Power and Light Company and The O'Day Corporation*, Case No. 88-20396, which is hereto attached as Exhibit "B," the Personal Representative of Richards seeks damages from O'Day because of the fatal injuries received by Richards on April 23, 1988.

10. The fatal injuries received by Polackwich and Richards on April 23, 1988 were caused, in whole or in part, because Boca Grande was negligent in (a) leasing the 16' Prindle Catamaran to Polackwich and Richards and (b) providing them with an unseaworthy vessel.

11. Although O'Day denies that it is legally responsible for the fatal injuries to Polackwich or Richards, O'Day is entitled to indemnity or contribution from Boca Grande if O'Day is found liable to Polackwich or Richards in the above described legal actions.

12. As a result of Boca Grande's negligence, O'Day has been required to obtain the services of the undersigned attorneys and have agreed to pay them a reasonable fee for their services.

WHEREFORE, O'Day demands judgment against Boca Grande for indemnity or contribution for any amount which O'Day is held liable to Polackwich or Richards, together with attorneys fees, interest and costs.

DATED this 2nd day of December, 1988.

/s/ _____
 NATHANIEL G. W. PIEPER, ESQ.
 and DAVID W. McCREADIE, ESQ.
 LAU LANE, PIEPER & ASTI, P.A.

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**CASE NO. 88-1636-Civ-T-17A
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**BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION
OF LIABILITY AS OWNER OF A 16' PRINDLE
CATAMARAN SAILING VESSEL,
HULL NO. SUR06214M82E**

**ANSWER AND AFFIRMATIVE DEFENSES TO CLAIM OF
FLORIDA POWER & LIGHT COMPANY**

Boca Grande Club, Inc., Petitioner/Plaintiff, files this its Answer and Affirmative Defenses to the claim of Florida Power & Light Company.

ANSWER

1. Boca Grande Club, Inc. admits that Florida Power & Light Company is a corporation authorized to do business in the State of Florida and at all material times, owned certain electrical transmission lines located near certain waters west of the Boca Grande Causeway commonly known as Gasparilla Pass. The remaining allegations of paragraph 1 of the Claim are denied.

2. Boca Grande Club, Inc. admits that it is a corporation organized and existing under the laws of the State of Florida, maintaining its business in Boca Grande, Florida, and was engaged in the business, among others, of owning and renting to its members 16'

Prindle Catamaran sailing vessels. The remaining allegations of paragraph 2 of the Claim are denied.

3. The allegations of paragraph 3 of the claim are admitted.

4. Boca Grande Club, Inc. admits that on or about April 23, 1988, the Vessel was rented to Robert J. Polackwich by Boca Grande Club, Inc. for use during a private pleasure voyage. Boca Grande Club, Inc. further admits that during that voyage, the vessel allegedly contacted electrical transmission lines owned and maintained by Florida Power & Light Company. The remaining allegations of paragraph 4 of the Claim are denied.

5. To the extent that paragraph 5 of the Claim alleges factual matters requiring a response from Boca Grande Club, Inc., the same are admitted.

6. To the extent that paragraph 6 of the Claim alleges factual matters requiring a response from Boca Grande Club, Inc., the same are admitted.

7. The allegations of paragraph 7 of the Claim are denied.

7A. The allegations of paragraph 7A of the Claim are denied.

7B. The allegations of paragraph 7B of the Claim are denied.

7C. The allegations of paragraph 7C of the Claim are denied.

7D. The allegations of paragraph 7D of the Claim are denied.

7E. The allegations of paragraph 7E of the Claim are denied.

8. The allegations of paragraph 8 of the Claim are denied.

WHEREFORE, having fully answered, Boca Grande Club, Inc. prays that Florida Power & Light Company's Claim be dis-

missed, and that Petitioner/Plaintiff recover its costs.

FIRST AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. alleges that the Claim of Florida Power & Light Company for indemnity/contribution fails to state a claim upon which relief can be granted against Petitioner/Plaintiff because no contract providing for indemnity exists between the parties, and Florida Power & Light Company was actively negligent with respect to the casualties at issue.

SECOND AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. specifically denies the allegations of unseaworthiness of the vessel, and further denies that it was negligent in any way that was a legal cause of the injuries to Robert J. Polackwich and Jonathan Richards.

THIRD AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. alleges that at the time and place of the casualty, the sole legal cause of the injuries to Robert J. Polackwich and Jonathan Richards was the negligence of Florida Power & Light Company, and that Boca Grande Club, Inc. was not guilty of any negligence that was the legal cause of the injuries to Robert J. Polackwich and Jonathan Richards, nor was any unseaworthy condition of the vessel in any way the cause of the injuries to Robert J. Polackwich and Jonathan Richards.

/s/ _____
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(Certificate of service omitted in printing)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO. 88-1636-Civ-T-17A
IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT
OF

BOCA GRANDE CLUB, INC. FOR
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OF LIABILITY AS OWNER OF A 16' PRINDLE
CATAMARAN SAILING VESSEL,
HULL NO. SUR 06214M82E

**ANSWER AND AFFIRMATIVE DEFENSES
TO CLAIM OF THE O'DAY CORPORATION**

Boca Grande Club, Inc., Petitioner/Plaintiff, files this its Answer and Affirmative Defenses to the Claim of The O'Day Corporation.

ANSWER

1. The allegations of paragraph 1 of the Claim are admitted.
2. The allegations of paragraph 2 of the Claim are admitted.
3. The allegations of paragraph 3 of the Claim are admitted.
4. The allegations of paragraph 4 of the Claim are admitted.
5. The allegations of paragraph 5 of the Claim are admitted.
6. The allegations of paragraph 6 of the Claim are admitted.

7. The allegations of paragraph 7 of the Claim are admitted.

8. To the extent that paragraph 8 of the Claim alleges factual matters requiring a response from Boca Grande Club, Inc., the same are admitted.

9. To the extent that paragraph 9 of the Claim alleges factual matters requiring a response from Boca Grande Club, Inc., the same are admitted.

10. The allegations of paragraph 10 of the Claim are denied.

11. The allegations of paragraph 11 of the Claim are denied.

12. Boca Grande Club, Inc. does not possess sufficient information to admit or deny the allegations of paragraph 12 of the Claim, and the same are therefore denied.

WHEREFORE, having fully answered, Boca Grande Club, Inc. prays that the Claim of The O'Day Corporation be dismissed, and that Petitioner/Plaintiff recover its costs.

FIRST AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. alleges that the Claim of The O'Day Corporation for indemnity/contribution fails to state a claim upon which relief can be granted against Petitioner/Plaintiff because no contract providing for indemnity exists between the parties, and The O'Day Corporation was actively negligent with respect to the casualties at issue.

SECOND AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. specifically denies the allegations of unseaworthiness of the vessel, and further denies that it was negligent in any way that was a legal cause of the injuries to Robert J. Polackwich and Jonathan Richards.

THIRD AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. alleges that at the time and place of the casualty, the sole legal cause of the injuries to Robert J. Polackwich and Jonathan Richards was the negligence of The O'Day Corporation, and the Boca Grande Club, Inc. was not guilty of any negligence that was the legal cause of the injuries to Robert J. Polackwich and Jonathan Richards, nor was any unseaworthy condition of the vessel in any way the cause of the injuries to Robert J. Polackwich and Jonathan Richards.

FOURTH AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. specifically denies that The O'Day Corporation is entitled to attorney's fees as demanded in the Claim, as no factual or legal basis for a claim of indemnity and/or contribution exists.

/s/ _____
 David F. Pope
 MACFARLANE, FERGUSON,
 ALLISON & KELLY
 P.O. Box 1531
 Tampa, Florida 33601
 Telephone: 813/223-2411

(Certificate of service omitted in printing)

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

CASE NO: 88-1636-CIV-T-17A
 IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT
 OF

BOCA GRANDE CLUB, INC. FOR
 EXONERATION FROM OR LIMITATION
 OF LIABILITY AS OWNER OF A 161 PRINDLE
 CATAMARAN SAILING VESSEL, HULL
 NO. SUR06214M82E

**ANSWER, AFFIRMATIVE DEFENSES AND CLAIM OF
 JONATHAN RICHARDS, DECEASED, STEPHANIE
 POLACKWICH, INDIVIDUALLY AND AS PERSONAL
 REPRESENTATIVE OF THE ESTATE OF JONATHAN
 RICHARDS, DECEASED, ROBERT J. POLACKWICH,
 DECEASED, ALAN S. POLACKWICH, SR., AS PERSONAL
 REPRESENTATIVE OF THE ESTATE OF ROBERT
 POLACKWICH, DECEASED ALPHONSUS J. POLACK-
 WICH, ELEANOR A. POLACKWICH AND THE LEGAL
 GUARDIAN OF ROBERT NATHAN POLACKWICH**

COME NOW the Defendants/Claimants, JONATHAN RICHARDS, Deceased, STEPHANIE POLACKWICH, Individually and as Personal Representative of the Estate of JONATHAN RICHARDS, Deceased, ROBERT J. POLACKWICH, Deceased, ALAN S. POLACKWICH, SR., as Personal Representative of the Estate of ROBERT J. POLACKWICH, Deceased, ALPHONSUS J. POLACKWICH, ELEANOR A. POLACKWICH, and the legal guardian of ROBERT NATHAN POLACKWICH, and answer of BOCA GRANDE CLUB, INC.'s

Claim for Exoneration from or Limitation of Liability and make claim against BOCA GRANDE CLUB, INC. as follows:

ANSWER

1. Denied.
2. Without knowledge.
3. Without knowledge.
4. Denied.
5. Without knowledge.
6. Denied.
7. Denied.
8. Denied.
9. Denied.
10. Admitted.
11. Denied.
12. Without knowledge.
13. Denied.
14. Without knowledge.
15. Without knowledge.
16. Denied.

AFFIRMATIVE DEFENSES

Defendants/Claimants further raise the following Affirmative Defenses to the Complaint for Exoneration from or Limitation of Liability:

17. Plaintiff has failed to establish the statutory condition precedent for filing a Complaint in accordance with the Federal Rules of Civil Procedure and Supplemental Rule F of the Supplemental Rules for certain Admiralty and Maritime Claims in that Plaintiff cannot show receipt of a written claim submitted by these Defendants that sufficiently put Plaintiff on notice pursuant to the procedural requirements of Rule F, Subsection 1 of the Supplemental Rules for certain Admiralty and Maritime claims.

18. The accident involving the 16 foot Prindle Catamaran, rented by Defendant ROBERT J. POLACKWICH for the use and enjoyment of himself and JONATHAN RICHARDS was substantially caused by direct and active negligence on the part of Plaintiff BOCA GRANDE CLUB, INC. and its agents, servants, or employees.

19. There is direct privity and/or knowledge of Plaintiff BOCA GRANDE, INC. and its agents, servants, or employees in that Plaintiff sufficiently participated in the negligence which ultimately caused the accident at issue, thus, rendering the Plaintiff unable to seek the limitation of liability offered to owners of vessels under 46 U.S.C. 183.

20. The 16 foot Prindle Catamaran, Hull No. SUR06214M82E is not a defined "vessel" pursuant to 46 U.S.C. 181 thereby precluding BOCA GRANDE CLUB, INC. from enjoying the benefits of limitation of liability which exists solely by statute pursuant to 46 U.S.C. 181.

CLAIM

1. JONATHAN RICHARDS, Deceased, was the natural son

and dependent of STEPHANIE POLACKWICH.

2. STEPHANIE POLACKWICH is the natural mother and guardian of JONATHAN RICHARDS, Deceased; the natural mother and guardian of ROBERT J. POLACKWICH; and was wife of DR. ROBERT J. POLACKWICH, Deceased.

3. ALAN S. POLACKWICH, SR., is the duly appointed Personal Representative of the Estate of DR. ROBERT J. POLACKWICH, Deceased.

4. ALPHONSUS J. POLACKWICH and ELEANOR A. POLACKWICH are the natural mother and father of DR. ROBERT J. POLACKWICH, Deceased.

5. At all times material hereto the Plaintiff/ Defendant, BOCA GRANDE CLUB, INC., was a Florida corporation, organized and existing under the laws of the State of Florida, maintaining its business in Boca Grande, Florida and was engaged in the business of renting or otherwise permitting its members to use a 16 foot Prindle Catamaran sailboat in the navigable waters of the Gulf of Mexico and Gasparilla Pass in about the BOCA GRANDE CLUB.

6. On April 23, 1988 the mast of the 16 foot Prindle Catamaran sailboat which POLACKWICH and RICHARDS had rented came into contact with high voltage electrical transmission lines which hung perilously close to the waters of Gasparilla Pass, which contact caused the deaths of POLACKWICH and RICHARDS.

7. At all times material hereto the Claimant/ Defendant, BOCA GRANDE CLUB, INC. owed to POLACKWICH and RICHARDS a duty to use reasonable care in the maintenance and rental of the 16 foot Prindle Catamaran sailboat.

8. BOCA GRANDE CLUB failed to use reasonable care in the maintenance and rental of the 16 foot Prindle Catamaran sailboat and in the following respects:

a. The 16 foot Prindle Catamaran which was rented to POLACKWICH and RICHARDS was unseaworthy.

b. BOCA GRANDE CLUB failed to instruct POLACKWICH and RICHARDS about latent dangers which BOCA GRANDE CLUB, INC. or its agents or employees had superior knowledge.

c. BOCA GRANDE CLUB, INC. failed to maintain the 16 foot Prindle Catamaran in a reasonably safe condition such that all parts were in working order and all instructions or warnings were preserved.

9. As a direct and proximate result of the BOCA GRANDE CLUB, INC.'S failure to use reasonable care POLACKWICH and RICHARDS were electrocuted to death.

Accordingly, JONATHAN RICHARDS, Deceased, STEPHANIE POLACKWICH, Individually and as Personal Representative of the Estate of JONATHAN RICHARDS, Deceased, DR. ROBERT J. POLACKWICH, Deceased, ALAN S. POLACKWICH, SR., as Personal Representative of the Estate of DR. ROBERT J. POLACKWICH, Deceased, ALPHONSUS J. POLACKWICH, ELEANOR A. POLACKWICH, and the legal guardian of ROBERT NATHAN POLACKWICH file their claim against the BOCA GRANDE CLUB, INC. for such fees, costs, interest and damage to which they are entitled within the jurisdiction of this Court.

(Certificate of Service omitted in printing)

/s/ _____
Earl L. Denney, Jr.
Florida Bar No. 106834
Montgomery, Searcy & Denney, P.A.
P.O. Drawer 3626
West Palm Beach, Fl. 33402
(407) 686-6300

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO. 88-1636-Civ-T-17A
IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT

OF

BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION
OF LIABILITY AS OWNER OF A 16' PRINDLE
CATAMARAN SAILING VESSEL HULL
NO. SUR06214M82E

**ANSWER AND AFFIRMATIVE DEFENSES TO CLAIM
OF JONATHAN RICHARDS, DECEASED, STEPHANIE
POLACKWICH, INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF JONATHAN
RICHARDS, DECEASED, ROBERT J. POLACKWICH,
DECEASED, ALAN S. POLACKWICH SR., AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF ROBERT J.
POLACKWICH, DECEASED, ALPHONSUS J. POLACK-
WICH, ELEANOR A. POLACKWICH AND THE LEGAL
GUARDIAN OF ROBERT NATHAN POLACKWICH**

Boca Grande Club, Inc., Petitioner/Plaintiff, files this its answer and affirmative defenses to the claim of Jonathan Richards, deceased, Stephanie Polackwich, individually and as personal representative of the Estate of Jonathan Richards, deceased, Robert J. Polackwich, deceased, Alan S. Polackwich, Sr., as personal representative of the Estate of Robert J. Polackwich, deceased, Alphonsus J. Polackwich, Eleanor A. Polackwich and the legal guardian of Robert Nathan Polackwich.

ANSWER

1. Boca Grande Club, Inc. does not possess sufficient information to admit or deny the allegations of Paragraph 1 of the Claim, and the same are therefore denied.

2. Boca Grande Club, Inc. does not possess sufficient information to admit or deny the allegations of Paragraph 2 of the Claim, and the same are therefore denied.

3. Boca Grande Club, Inc. does not possess sufficient information to admit or deny the allegations of Paragraph 3 of the Claim, and the same are therefore denied.

4. Boca Grande Club, Inc. does not possess sufficient information to admit or deny the allegations of Paragraph 4 of the Claim, and the same are therefore denied.

5. Boca Grande Club, Inc. admits that at all times material hereto, it was a Florida corporation, organized and existing under the laws of the State of Florida, maintaining its place of business in Boca Grande, Florida, and was engaged in the business of renting to its members 16' Prindle Catamaran Sailing Vessels. The remaining allegations of Paragraph 5 of the Claim are denied.

6. Boca Grande Club, Inc. admits that on April 23, 1988, the mast of the 16' Prindle Catamaran Sailing Vessel which Polackwich had rented came into contact with high voltage electric power/transmission lines in the vicinity of certain navigable waters commonly known as Gasparilla Pass, which contact caused the deaths of Polackwich and Richards. The remaining allegations of Paragraph 6 of the Claim are denied.

7. To the extent that Paragraph 7 of the Claim alleges factual matters requiring a response from Boca Grande Club, Inc., the same are denied.

8. The allegations of Paragraph 8 of the Claim, and

SubParagraphs a, b, and c, thereof are denied.

9. The allegations of Paragraph 9 of the Claim are denied.

WHEREFORE, having fully answered, Boca Grande Club, Inc. prays that the Claim of Jonathan Richards, deceased, Stephanie Polackwich, individually and as personal representative of the Estate of Jonathan Richards, deceased, Robert J. Polackwich, deceased, Alan S. Polackwich, Sr., as personal representative of the Estate of Robert J. Polackwich, deceased, Alphonsus J. Polackwich, Eleanor A. Polackwich and the legal guardian of Robert Nathan Polackwich, be dismissed, and that Petitioner/Plaintiff recover its costs.

FIRST AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. alleges that any injury, losses or damages sustained or suffered by Robert J. Polackwich and/or Jonathan Richards at the times and places and on the occasions mentioned in the Claim were proximately caused, in whole or in part, or were contributed to, in whole or in part, by the neglect, fault, or want of care of Robert J. Polackwich and/or Jonathan Richards, and not by any neglect, fault, or want of care on the part of Boca Grande Club, Inc., or by any unseaworthiness of the 16' Prindle Catamaran Sailing Vessel.

SECOND AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. specifically denies the allegations that it failed to exercise reasonable care in the maintenance and rental of the 16' Prindle Catamaran Sailing Vessel, and further denies that it was negligent in any way that was the legal cause of the injuries to Robert J. Polackwich and Jonathan Richards.

THIRD AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. specifically denies that either Robert J. Polackwich or Jonathan Richards were the beneficiaries of any warranty of seaworthiness concerning the 16' Prindle Catamaran Sailing Vessel.

FOURTH AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. alleges that the usage of the 16' Prindle Catamaran Sailing Vessel by Robert J. Polackwich and Jonathan Richards was subject to the terms and conditions of a rental agreement, and Boca Grande Club, Inc. incorporates into its Answer and Affirmative Defenses all of the terms and conditions of said rental agreement. A true and correct copy of said rental agreement is attached hereto as an exhibit.

FIFTH AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. specifically denies the allegations of unseaworthiness of the 16' Prindle Catamaran Sailing Vessel, and further denies that it was negligent in any way that was a legal cause of the injuries to Robert J. Polackwich and Jonathan Richards.

SIXTH AFFIRMATIVE DEFENSE

Boca Grande Club, Inc. alleges that at the time and place of the casualty, the sole legal cause of the injuries to Robert J. Polackwich and Jonathan Richards was the negligence of persons/parties other than the Boca Grande Club, Inc., and that Boca Grande Club, Inc. was not guilty of any negligence that was the legal cause of the injuries to Robert J. Polackwich and Jonathan Richards, nor was any unseaworthy condition of the 16' Prindle Catamaran Sailing Vessel in any way the cause of the injuries to Robert J. Polackwich and Jonathan Richards.

/s/ _____

David F. Pope

D. James Kadyk

MACFARLANE, FERGUSON,

ALLISON & KELLY

P. O. Box 1531 - Tampa, Florida 33601

Telephone: 813/223-2411

Attorneys for Plaintiff

(Certificate of service omitted in printing)

BOCA GRANDE CLUB

Date: _____ Boat: _____
 Name: _____ Rate 1st Hr. _____ Addl. Hrs. _____
 Home Address: _____ Time In: _____
 _____ Time Out: _____
 Local Address: _____ Total Time: _____
 _____ Rental Charge: \$ _____
 Car: _____ Tag #: _____ Sales Tax: \$ _____
 Deposit: \$ _____ Total Charge: \$ _____

1. Wear life vest at all times, especially when winds are above 8 miles per hour.
2. Stay at least 25 yards from all obstructions.
3. Move to nearest shore in event of a thunderstorm, point boat to wind, loosen sails and take cover.
4. Watch out for other boats, especially power boats.
5. In case you overturn, point top of mast into the wind, pull down on highest hull and boat will right itself.

REMEMBER — STAY WITH YOUR BOAT — IT WON'T SINK!

I HAVE READ AND UNDERSTOOD THE ABOVE CAUTIONS. I AGREE TO RETURN TO THE OWNER ALL RENTED EQUIPMENT FREE OF DAMAGE AND LOSS. FURTHER, I AGREE TO ASSUME FULL RESPONSIBILITY FOR ALL DAMAGES TO PROPERTY, THEREBY RELEASING RENTER AND OWNER FROM ANY AND ALL LIABILITIES THAT I MAY CAUSE WHILE EQUIPMENT IS IN MY POSSESSION AND UNDER MY CARE. I AGREE TO BE BOUND TO ALL THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

SIGNED: s/Polackwich DATE: 4/23/88

Exhibit to Answer and Affirmative Defenses.

**UNITED STATES DISTRICT COURT
 MIDDLE DISTRICT OF FLORIDA
 TAMPA DIVISION**

Case No.: 88-1636-Civ-T-17A
 IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT

OF

BOCA GRANDE CLUB, INC. FOR
 EXONERATION FROM OR LIMITATION
 OF LIABILITY AS OWNER OF A 16'
 PRINDLE CATAMARAN SAILING
 VESSEL, HULL NO. SUR06214M82E

STIPULATION AND JOINT MOTION FOR DISMISSAL

Boca Grande Club, Inc., Plaintiff, and
 Alan S. Polackwich, Sr.

Alan S. Polackwich, Sr. as personal representative of
 the estate of Dr. Robert J. Polackwich, Deceased

Stephanie J. Polackwich

Stephanie J. Polackwich as personal representative of
 the estate of Jonathan Richards, Deceased

Stephanie J. Polackwich as mother and natural
 guardian of Robert Jamison Polackwich, a minor

Trudy Bergund, as mother and natural guardian of
 Nathan Polackwich, a minor

Alphonsus J. Polackwich

Alphonsus J. Polackwich as personal representative of
the estate of Eleanor A. Polackwich, Deceased,

hereinafter referred to as Stipulating Claimants, do hereby stipulate and agree that the claims of each of the Stipulating Claimants against Boca Grande Club, Inc. filed in this proceeding have been amicably, fairly and reasonably resolved and settled provided the conditions stated below are met and do hereby jointly move the Court for entry of an order dismissing, with prejudice, the claims of each of the above Stipulating Claimants against the Plaintiff.

The settlement between Plaintiff and Stipulating Claimants is conditioned upon the stay of this limitation action as to the remaining claims until the actions in state court have been completed. Accordingly, Plaintiff and Stipulating Claimants do hereby jointly move the Court for an Order staying the further prosecution of this action until the presently pending actions in state court have been completed. Plaintiff and the Stipulating Claimants do further move that the Court provide in its Order of Dismissal that the case will be so stayed, except for motions for summary judgment to be hereafter filed by Plaintiff as to the remaining claims of Florida Power & Light Company and the O'Day Corporation for indemnity and contribution.

The settlement between Plaintiff and the aforesaid Stipulating Claimants is also conditioned upon the Court's providing in its order of dismissal that the injunction heretofore entered by the Court in this proceeding be lifted as to the Stipulating Claimants. The order of dismissal should also specifically provide, that the injunction shall remain in full force and effect only as to any claims against Boca Grande Club, Inc.

The parties hereto further move the Court to provide in its order of dismissal that the Plaintiff and each of the Stipulating Claimants shall bear their own respective costs.

Stipulated and agreed on this 10 day of December, 1990.

MACFARLANE, FERGUSON,
ALLISON & KELLY

By: /s/ _____
Jack C. Rinard #095376
D. James Kadyk #238325
P.O. Box 1531
Tampa, FL 33601
Tel: 813/223-2411
Attorneys for Boca Grande Club,
Inc.

SEARCY, DENNEY, SCAROLA,
BARNHART & SHIPLEY

By: /s/ _____
John A. Shipley
P.O. Drawer 3626
West Palm Beach
Florida 33401-3626
Tel: 407/686-6300
Attorneys for Settling Claimants

(Certificate of service omitted in printing)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Case No.: 88-1636-Civ-T-17A
IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT

OF

BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION
OF LIABILITY AS OWNER OF A 16' PRINDLE
CATAMARAN SAILING VESSEL, HULL
NO. SUR06214M82E

**MEMORANDUM OF LAW IN
SUPPORT OF JOINT MOTIONS**

Boca Grande Club, Inc., Plaintiff, files this memorandum of law in support of the joint motions set out in the Stipulation and Joint Motion for Dismissal and Stay filed concurrently herewith by Plaintiff and those parties identified as Stipulating Claimants in said stipulation.

I. Stay Of Limitation Action

Boca Grande Club and the Stipulating Claimants have amicably resolved all claims and issues outstanding between them and seek to have all claims of the Stipulating Claimants in this action and in the pending state court action dismissed with prejudice as to Boca Grande Club. The settlement between Boca Grande Club and the Stipulating Claimants is conditioned upon obtaining a stay of this limitation proceeding until the state court action is concluded or the termination of this limitation action by summary judgment as to all remaining claimants in this proceeding.

Upon consummation of the settlement between Boca Grande Club and the Stipulating Claimants, the only claims left in this limitation action will be the claims of Florida Power & Light Company and The O'Day Corporation. Each of those companies seek indemnity or contribution from Boca Grande Club in the event that either of the companies is found to be liable to the Stipulating Claimants in the state court action.

Boca Grande Club intends to promptly file a motion for summary judgment directed to the indemnity and contribution claims of Florida Power & Light Company and The O'Day Corporation which will demonstrate to the Court that neither of those companies have any basis for claiming indemnity from Boca Grande Club and also showing that the law in the Eleventh Circuit is clearly to the effect that the settlement between Boca Grande Club and the Stipulating Claimants will serve to legally cut off any contribution rights that Florida Power & Light Company and The O'Day Corporation may otherwise have had. However, the immediate chore is to consummate the settlement, get the Stipulating Claimants out of the limitation action and the state proceeding back in gear.

As the Court will appreciate, once the Stipulating Claimants are out of this limitation action, all that is left are the indemnity and contribution claims. Even assuming for the purpose of the motion to stay that there may be viable claims for indemnity or contribution at some time in the future it is obvious that such claims can not be quantified until the state proceeding is terminated. There is therefore nothing for this Court to do in this limitation action after the settlement with the Stipulating Claimants is consummated until the state proceeding is completed. That is, nothing except to address the motion for summary judgment mentioned above when it is filed by Boca Grande Club.

**II. Lift Injunction As To Stipulating Claimants
And Permit Them To Proceed In State Court.**

The settlement between Boca Grande Club and the stipulating

Claimants is also conditioned upon the Court lifting the injunction in this limitation proceeding as to the Stipulating Claimants and permitting them to go forward with their state court actions against entities other than Boca Grande Club. It is Submitted that the lifting of the injunction follows as a matter of course once the Stipulating Claimants are dismissed from the limitation case. All of the claims between the Stipulating Claimants and Boca Grande Club will have been resolved and terminated and, accordingly, there will be no need to enjoin actions by the Stipulating Claimants against Boca Grande Club. Additionally all claims made by the Stipulating Claimants in the pending state proceeding will also be dismissed as a part of the settlement.

The injunction must remain in effect as to all parties other than the Stipulating Claimants. Furthermore, the injunction must specifically remain in effect as to the third party complaint which Florida Power & Light Company filed against Boca Grande Club in the state action.

III. The Injunction Protects Only Boca Grande Club.

The injunction entered by the Court (doc 55) protects only Boca Grande Club. The injunction prohibits actions against Boca Grande Club in any forum other than in this limitation proceeding. Included within the injunction is the third party complaint filed by Florida Power & Light Company against Boca Grande Club in the state court action. The third party complaint seeks indemnity or contribution. Florida Power & Light Company has also filed a claim for indemnity or contribution in this limitation action in the event it is held liable to the Stipulating Claimants in the pending state proceeding.

The injunction does not prohibit suits by any other parties for damages alleged to arise out of the casualty from which this limitation action arises. That is, the injunction does not in any way prohibit any of the Stipulating Claimants from suing, for example, Florida Power & Light Company in the state proceeding.

Unfortunately, confusion has been injected into this case, and certainly into the state proceeding, by claimants in the limitation proceeding who are also defendants in the state case. Both Florida Power & Light company and The O'Day Corporation have asserted that the injunction entered in favor of Boca Grande Club prohibits the prosecution of the state actions against them. (See the memorandums filed in opposition to the Stipulating Claimants motion to clarify the injunction, doc. 90 and 91.) Indeed, Florida Power & Light Company has filed a motion in the state action informing the state court that it is enjoined from proceeding with the state proceedings. (See the motion filed by Florida Power & Light company seeking an order to remove the state case from the trial calendar; a copy is attached as Exhibit A.) The injunction does not protect those who have filed claims against Boca Grande Club in this limitation proceeding nor is it any impediment to parties who have filed claims in a limitation proceeding from litigating amongst themselves outside of the limitation action. In *Matter of Brent Towing Co., Inc.*, 414 F.Supp. 131 (N.D. Fla. 1975).

To clear up any existing confusion, particularly for the benefit of the state court, Boca Grande Club prays that the Court will specifically note in its order lifting the injunction as to the Stipulating Claimants exactly what claims and which parties continue to be subject to the injunction in this limitation action.

CONCLUSION

In view of the joint motion and the foregoing points, Boca Grande Club, Inc. prays that the Court will take the following action:

1. Grant the joint motion of dismissal and dismiss all claims of the Stipulating Claimants with prejudice.
2. Grant the joint motion for a stay of this action and provide in said order that Boca Grande Club, Inc. has leave to file motions for summary judgment as to the remaining claims for indemnity and contribution.

3. Provide in the order of dismissal that the injunction entered in this limitation proceeding shall be lifted as to the Stipulating Claimants but shall remain in full force and effect as to all remaining claims in the limitation proceeding and specifically provide in said order that the injunction remains in effect as to the claims by Florida Power & Light Company and The O'Day Corporation for indemnity or contribution.

4. Provide in the order of dismissal that Boca Grande Club, Inc. and the Stipulating Claimants will bear their own respective costs of this action.

Request For Hearing

Boca Grande Club, Inc. and the Stipulating Claimants request a very brief hearing before the Court with respect to the Stipulation and Joint Motions and believe such a hearing would serve to expedite consummation of the settlement.

Respectfully submitted,

MACFARLANE, FERGUSON,
ALLISON & KELLY

/s/ _____

Jack C. Rinard #095376

David F. Pope #1164452

P.O. Box 1531

Tampa, FL 33601

Tel: 813/223-2411

Attorneys for Boca Grande Club, Inc.

(Exhibit A and certificate of service omitted in printing)

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

CASE NO: 88-1636-CIV-T-17A
IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT

OF

BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION
OF LIABILITY AS OWNER OF A 16' PRINDLE
CATAMARAN SAILING VESSEL, HULL
NO. SUR06214M82E

FLORIDA POWER AND LIGHT COMPANY'S MEMORANDUM IN RESPONSE TO STIPULATION AND JOINT MOTION FOR DISMISSAL

Pursuant to Local Rule 3.01, Middle District Florida Rules, Florida Power and Light Company hereby files its memorandum in response to the Stipulation and Joint motion for Dismissal previously filed by counsel for the Boca Grande Club and counsel for the Estates of Jonathan Richards and Robert Polackwich.

PROCEDURAL BACKGROUND OF THIS MOTION

This action was instituted by the filing of a petition for limitation of or exoneration from liability by the Boca Grande Club, Inc. The action arises out of a maritime accident which occurred on April 23, 1988, when a sailboat occupied by Robert J. Polackwich and Jonathan Richards came into contact with overhead electrical power lines near Boca Grande, Florida. The sailboat involved in the incident was owned and maintained by the Boca Grande Club, Inc. and was manufactured by the O'Day Corporation or its prede-

cessor-in-interest. The overhead electrical power lines in question were owned and maintained by Florida Power and Light Company.

The representatives of the Estates of Polackwich and Richards instituted wrongful death actions in Florida state circuit court. Those state court actions initially named Florida Power and Light Company and the O'Day Corporation as defendants. Certain discovery was previously completed in the state court actions. Shortly thereafter, the Boca Grande Club, Inc. instituted this limitation of liability action. Claims were filed against the Boca Grande Club, Inc. by numerous claimants, including the Estate of Robert Polackwich, the Estate of Jonathan Richards, the O'Day Corporation and Florida Power and Light Company. Ultimately, this Court issued its injunction staying further prosecution of the state court action.

This matter is now before the Court for consideration of a joint motion for dismissal filed by counsel for Boca Grande Club and the Estates.

**ANY COURT ORDER RESULTING FROM THE JOINT
MOTION SHOULD NOT OPERATE TO APPROVE THE
SETTLEMENT AS ONE ENTERED INTO IN GOOD FAITH.**

As of the date of this filing, Florida Power and Light Company has not been provided with any of the settlement documents which set forth the precise terms of the agreement between the Estates and the Boca Grande Club. Accordingly, Florida Power and Light Company is unable to determine whether the settlement is one which can properly be characterized as a "good faith" settlement. However, informally obtained information regarding the settlement suggests that the settlement funds paid by the Boca Grande Club do not accurately reflect either Boca Grande's potential liability, its available insurance proceeds or the Estates evaluation of the value of the case.

Under such circumstances, Florida Power and Light Company

cannot agree to dismissal of any claims upon any terms which affect the claims filed by Florida Power and Light Company. Specifically, any Court Order which purports to pass upon the settlement should not operate to foreclose Florida Power and Light Company from later challenging the settlement, particularly if the alleged "good faith" nature of the settlement is used as a premise for Boca Grande Club, Inc.'s subsequent motion for summary judgment on Florida Power and Light Company's claims for contribution and/or indemnity. The inquiry into whether a settlement is one entered into in good faith involves a multi-pronged analysis which would be impossible to undertake on the information currently before the Court. Therefore, Florida Power and Light Company opposes entry of an Order of the Court "approving" the alleged settlement and requests that any Order entered by the Court regarding the settlement contain language which expressly reserves for later decision any determination regarding the good faith nature or reasonableness of the settlement. Finally, numerous discovery matters remain unresolved and pending before this Court and should be resolved by the Court prior to any dismissal so that the parties need not be further delayed by having to re-visit such matters in state court.

/s/ _____

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(Certificate of service omitted in printing.)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO. 88-1636-CIV-T-17A

IN THE MATTER OF THE COMPLAINT
OF

BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION
OF LIABILITY AS OWNER OF A 16'
PRINDLE CATAMARAN SAILING
VESSEL, HULL NO. SUR06214M82E

ORDER

THIS CAUSE is before the Court upon the Stipulation and Joint Motion for Dismissal filed by Boca Grande Club, Inc., Plaintiff, and the following Stipulating Claimants in this case:

Alan S. Polackwich, Sr.

Alan S. Polackwich, Sr., as personal representative of the estate of Dr. Robert J. Polackwich, Deceased

Stephanie J. Polackwich

Stephanie J. Polackwich, as personal representative of the estate of Jonathan Richards, Deceased

Trudy Bergund, as mother and natural guardian of Nathan Polackwich, a minor

Alphonsus J. Polackwich

Alphonsus J. Polackwich, as personal representative of the estate of Eleanor A. Polackwich, Deceased.

The Stipulation and Joint Motion for Dismissal was considered by the United States Magistrate Judge, pursuant to a specific order of referral, and the Magistrate Judge has filed his report recommending that all claims filed in this case by the Stipulating Claimants against the Plaintiff be dismissed with prejudice, subject to conditions that the Magistrate Judge recommends the Court approve.

Upon consideration of the report and recommendation of the Magistrate Judge and upon this Court's independent examination of the file, the Magistrate Judge's report and recommendation is adopted and confirmed and made a part hereof, and it is

ORDERED that:

1. The Joint Motion for Dismissal is GRANTED, and all claims of the Stipulating Claimants against the Plaintiff only are hereby dismissed with prejudice.

2. Further prosecution of this limitation action is hereby STAYED until the state court lawsuits have been terminated. The only exception to this stay is that Plaintiff may, within forty-five (45) days from the date of this Order, file motions for summary judgment as to the claims of Florida Power & Light Company and The O'Day Corporation which seek indemnity and contribution. Florida Power & Light Corporation and The O'Day Corporation will respond to any such motions filed by Plaintiff in accordance with the Local Rules of this Court.

3. The "Order on Motion for Injunction and Injunction" ("Injunction Order," doc. 55) entered by the United States Magistrate Judge on February 23, 1990 is hereby LIFTED as to each of the Stipulating Claimants and each Stipulating Claimant is free to pursue whatever actions he or she may have against parties other than Boca Grande Club, Inc. in other forums, including the action presently pending in the Fifteenth Judicial Circuit in Palm Beach County, Florida, Case No. CL 89-9670 AH. The Injunction Order remains in full force and effect only with respect to other

parties' or potential parties' actions, if any, against Boca Grande Club, Inc., as owner of 16' Prindle Catamaran Sailing Vessel and particularly with respect to the claims of parties in this action against Boca Grande Club, Inc. that have not been settled. The injunction remains specifically in effect as to claims by Florida Power & Light Company and The O'Day Corporation for indemnity and contribution. The injunction does not protect Florida Power & Light Company, The O'Day Corporation, or any party other than Boca Grande Club, Inc.

4. All pending discovery motions are hereby DENIED.

5. The entry of this Order does not make any determination as to the good faith of the settlement between the Plaintiff and the Stipulating Claimants.

6. Boca Grande Club, Inc. and each of the Stipulating Claimant shall bear their own respective costs.

DONE and ORDERED in Chambers at Tampa, Florida, this 13th day of March, 1991.

/s/ _____
UNITED STATES DISTRICT JUDGE
ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO. 88-1636-Civ-T-17A
IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT

OF

BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION
OF LIABILITY AS OWNER OF A 16' PRINDLE
CATAMARAN SAILING VESSEL,
HULL NO. SUR06214M82E

**MOTION FOR SUMMARY JUDGMENT AS TO CLAIMS
OF FLORIDA POWER & LIGHT COMPANY
AND THE O'DAY CORPORATION**

Boca Grande Club, Inc., Plaintiff, moves the court for entry of an order granting summary judgment as to the claims of Florida Power & Light Company (FPL) and The O'Day Corporation (O'Day) for indemnity or contribution. Boca Grande Club would show to the Court that there do not exist in this case any disputed facts with respect to the claims of FPL and O'Day for indemnity or contribution and, accordingly, summary judgment is appropriate as a matter of law. Rule 56, *F. R. Civ. P.*

Memorandum in Support of Motion

This limitation action was started by Boca Grande Club as a result of the deaths of Dr. Polackwich and Jonathan Richards when the mast of the sailboat they were operating in the navigable waters of Gasparilla Pass contacted a high voltage electric transmission line. The claims of the estates of Dr. Polackwich and Jonathan

Richards as well as the claims of others (heretofore and herein called collectively "Stipulating Claimants") filing claims in the limitation action as a result of the deaths have been settled by Boca Grande Club. This Court, in its order of March 13, 1991, dismissed with prejudice all the claims, with two exceptions, arising out of the deaths. The two remaining claims are those of FPL and O'Day for "indemnity and contribution." (See doc. 10 and 11). In its order of March 13th the Court stayed further proceedings in this limitation action until resolution of state court actions brought by the Stipulating Claimants in Palm Beach County. The Court permitted Boca Grande Club to file a motion for summary judgment as to the claims of FPL and O'Day for indemnity and contribution.

Boca Grande Club will demonstrate in this memorandum that neither FPL nor O'Day ever had actions for indemnity. Boca Grande Club will also demonstrate that the settlement it made with the Stipulating Claimants effectively bars any action that FPL and O'Day may have had for contribution. Because FPL and O'Day have no claims upon which this Court may grant relief, summary judgment is particularly appropriate. Rule 12, *F. R. Civ. P.*; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); *Celotex Corporation v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

A. The Indemnity Claims.

Both FPL and O'Day have asserted claims for indemnity. It is fundamental that indemnity arises only out of a contract which provides for one to indemnify another or out of a relationship whereby one party, who is without fault, may nevertheless become vicariously liable for the negligence of another. An example is the relationship of master and servant. See generally, Prosser & Keeton, *The Law of Torts*, (5th ed 1984), §51. There is no contract between Boca Grande Club and FPL or O'Day. Accordingly, contract can furnish no basis for the indemnity claims of FPL and O'Day.

Similarly, there is no relationship between Boca Grande Club

on the one hand and either FPL or O'Day on the other out of which FPL or O'Day would be held vicariously liable for any wrongdoing of Boca Grande Club. No such relationship was alleged and none exists. If FPL or O'Day are ultimately found to be liable to the Stipulating Claimants it will be because of the act or omission of FPL or O'Day Corporation and not because of an act or omission of Boca Grande Club.

At one time a third theory of indemnity, known as the concept of active-passive negligence, prevailed in maritime cases. That theory permitted a wrongdoer who was merely passively negligent to obtain indemnity from an actively negligent party. The active-passive negligence theory of indemnity no longer prevails. It was rejected by the United States Court of Appeals for the Fifth Circuit in *Loose v. Offshore Navigation, Inc.*, 670 F. 2d 493, 500-502 (5th Cir 1982). Rejection of the doctrine was approved by the United States Court of Appeals for the Eleventh Circuit in *Self v. Great Lakes Dredge & Dock Company*, 832 F. 2d 1540, 1556-1557 (11th Cir 1987). Even were the active-passive theory still viable it would not support indemnity in this case because the liability of FPL and O'Day will depend on the acts of each and not on the acts of some other party.

Neither FPL nor O'Day have alleged any facts which would support indemnity and there is in fact no basis for indemnity in this case. Accordingly, the Court should forthwith grant summary judgment in favor of Boca Grande Club as to the indemnity claims of FPL and O'Day.

B. The Contribution Claims.

FPL and O'Day also assert claims for contribution against Boca Grande Club. Each has alleged that if it is found liable to the Stipulating Claimants then it is entitled to contribution from Boca Grande Club. It is the position of Boca Grande Club that pursuant to the law of the Eleventh Circuit the settlement it made with the Stipulating Claimants effectively bars claims for contribution by

non-settling tortfeasors such as FPL and O'Day. *Self v. Great Lakes Dredge & Dock Company*, 832 F. 2d 1540 (11th Cir 1987); *Great Lakes Dredge & Dock Company v. Tanker Robert Watt Miller*, 1990 A.M.C. 2247 (M.D. Fla. 1990).

The contribution claims of FPL and O'Day are maritime claims which are governed by maritime law. *Cooper Stevedoring Co. v. Fritz Kopke, Inc.*, 417 U.S. 106, 94 S. Ct. 2174, 40 L. Ed 2d 694 (1974); *Self v. Great Lakes Dredge & Dock Company*, 832 F. 2d 1540, 1547 (11th Cir 1987); *Daughtry v. Diamond M Company*, 693 F. Supp 856 (C.D. Cal. 1988).

In *Self*, the Eleventh Circuit held:

Under the principle announced in *Luke v. Signal Oil & Gas Co.*, 523 F. 2d 1190 (5th Cir 1975), contributions cannot be obtained by one tortfeasor who has settled with and been released by the claimant. 832 F. 2d at 1547.

Following the Eleventh Circuit's decision in *Self*, that case came back to the district court to resolve the claim of Great Lakes Dredge & Dock Company for contribution from Chevron Shipping company. Chevron had many years previously settled with the plaintiffs and obtained a release. Great Lakes nevertheless claimed contribution from Chevron because Great Lakes paid a greater share to the injured parties than its proportionate share of fault. Chevron moved for summary judgment on Great Lakes contribution claim and argued that *Self* held that no actions for contribution could be brought against a settling tortfeasor. The Court agreed and granted Chevron's motion for summary judgment. *Great Lakes Dredge & Dock Company v. Tanker Robert Watt Miller*, 1990 A.M.C 2247 (M.D. Fla. 1990).

In this case Boca Grande Club has settled with the Stipulating Claimants. A copy of the release given to Boca Grande Club is attached as Exhibit A. That settlement bars the claims of FPL and O'Day for contribution. Accordingly, the Court must forthwith

enter summary judgment in favor of Boca Grande Club as to the contribution claims of FPL and O'Day.

C. Good Faith Settlement.

FPL objected to the Joint Motion and Stipulation filed by Boca Grande Club and the stipulating Claimants which sought an order of dismissal of the claims of the Stipulating Claimants and the stay of further proceedings in the limitation action. The basis for FPL's objection to the settlement was stated by FPL as follows:

...Florida Power & Light Company cannot agree to dismissal of any claims upon any terms which effect the claims filed by Florida Power & Light Company. Specifically, any Court order which purports to pass upon the settlement should not operate to foreclose Florida Power & Light Company from later challenging the settlement, particularly if the alleged 'good faith' nature of the settlement is used as a promise for Boca Grande Club, Inc.'s subsequent motion for summary judgment on Florida Power & Light Company's claims for contribution and/or indemnity. (Florida Power & Light Company's Memorandum In Response To Stipulation And Joint Motion For Dismissal, p. 3).

FPL cited no authority for the proposition that a settlement must be demonstrated to be in good faith before it effectively bars claims for contribution. At the hearing before the magistrate FPL articulated the same point quoted above, again, without referring the magistrate to any authority to support the proposition. Given the position that FPL has taken it is assumed that FPL will oppose this motion for summary judgment as to the contribution claims upon the grounds that this Court has not determined that the settlement between Boca Grande Club and the Stipulating Claimants was made in "good faith."

The term "good faith" is susceptible of many meanings. FPL has yet to divulge precisely what it conceives is encompassed by

its use of the phrase. The settlement between Boca Grande Club and the Stipulating Claimants was made in "good faith" from the perspective of both Boca Grande Club and the Stipulating Claimants. The settlement was made in the open, without any collusive purpose or ulterior motive. From the perspective of Boca Grande Club, the club settled a case in which it did not deem itself to be responsible and in which it believed ultimately it would be found to be free of fault, in order to extricate itself from a time consuming and expensive lawsuit. From the perspective of the Stipulating Claimants, they received a sizable amount of money from a party that they had not sued in their state court actions, in order to remove themselves from a limitation proceeding that potentially restricted and seriously complicated the prosecution of their actions against the parties they considered to be primarily liable; i.e., the defendants in the state court actions. (Boca Grande Club was not initially sued in the state court actions by the Stipulating Claimants. Boca Grande Club was brought into those actions by the third party complaint of FPL asking for indemnity and contribution.)

In so far as concerns the effect of the settlement upon the remaining claims of FPL and O'Day for contribution, it is the position of Boca Grande Club that the settlement bars contribution. It is the position of Boca Grande Club that it is not necessary for Boca Grande Club to endeavor to unilaterally demonstrate that the settlement was in "good faith" in any sense, nor is it necessary that the district court hold a hearing or trial to determine whether or not the settlement was made in "good faith." The fact that there has been a settlement and release given to Boca Grande Club is sufficient to bar the contribution claims of FPL and O'Day. *Self v. Great Lakes Dredge & Dock Company*, 832 F. 2d 1540 (11th Cir 1987).

Courts outside of the Eleventh Circuit have dealt with the concept of good faith in deciding what effect a settlement will have on contribution claims in maritime cases. The opinions in *Miller v. Christopher*, 887 F. 2d 902 (9th Cir 1989) and *Commercial Cleaning Corporation v. Allied Chemical Company*, 206 Cal App

3d 1066, 254 Cal Rptr 401, 1989 A.M.C. 769 (1988, 4th Dist.) provide useful background to the different theories as to the effect a settlement has on claims for contribution by non-settling parties. (Because the opinion in *Commercial Cleaning Corporation v. Allied Chemical Company* was withdrawn by the California Supreme Court that opinion cannot be considered as precedent. See *Great Lakes Dredge & Dock Company v. Tanker Robert Miller*, 1990 A.M.C. 2254, 2249, n 1 (M.D. Fla. 1990). Nevertheless, the opinion is most useful and is entitled, at least, to the consideration given to a relevant text or law review article.)

Both opinions discuss at length the three potential solutions to the problem presented in a situation where one of a number of defendants enters into a settlement with the plaintiff. The alternatives are set out in Restatement (Second) of Torts §886 A, comment m. The second alternative is that:

- (2) The money paid extinguishes both any claims on the part of the injured party and any claim for contribution by another tortfeasor who has paid more than his equitable share of the obligation and seeks contribution.

The courts in *Commercial Cleaning* and *Miller v. Christopher* both recognized that the Eleventh Circuit, in *Self v. Great Lakes Dredge & Dock Company*, *supra*, elected to follow the quoted alternative; namely, that settlement extinguishes rights to contribution by the remaining defendants. *Miller v. Christopher*, 887 F. 2d 902, 905-906 (9th Cir 1989); *Commercial Cleaning Corporation v. Allied Chemical Company*, 1989 A.M.C. 769, 778-789 (4th Dist 1988). The Restatement comment notes that the second alternative favors the settling tortfeasor and suggests that a requirement of good faith may be necessary, but then concludes:

But once there is an attempt to provide objective criteria for determining whether a transaction is in good faith, *the finality of the release comes into question, books cannot be closed and the major advantage of the solution is dissipated*. See 1989 A.M.C. at 775 (Emphasis added).

In other words, a requirement that there be a demonstration that a settlement comports with some preestablished criteria of "good faith" will effectively dilute the finality of settlement. If there can be no certainty and finality as a result of a settlement there can be no incentive to settle in the first place.

It is very clear that the Eleventh Circuit, in selecting the second alternative, was very conscious of the fact that a nonsettling tortfeasor could end up paying more or less than its judicially determined proportionate share of a loss. On this point the court held:

We do not overlook the fact that in a case such as this, a joint tortfeasor may be left paying a higher or lower percentage of the damages than it caused. Nor do we overlook the rule that there may be joint contribution amongst tortfeasors in an admiralty case *and that in the absence of a settlement*, the amount of Contribution turns on the percentage of fault of each joint tortfeasor.

We acknowledge that the rule that we adopt today may cause disparity in the percentage of payment as between the settling and nonsettling tortfeasor in maritime personal injury actions. 832 F. 2d at 1547-1548 (Emphasis added).

Significantly, the Court in *Self* did not tack on to the rule that contributions cannot be obtained from settling tortfeasors a requirement that there must be a demonstration that the settlement was in "good faith." Implicit in the Eleventh Circuit's decision in *Self* is the rejection by that court of the concept that a settlement, to act as a bar against claims for contributions by non-settling tortfeasors, must reasonably represent the ultimate degree of proportionate fault of the settling tortfeasor. Cf. *Leger v. Drilling Well Control, Inc.*, 592 F. 2d 1246 (5th Cir 1979). *Leger* was rejected by the Eleventh Circuit. *Self*, 832 F. 2d at 1547-1548.

By contrast, the United States Court of Appeals for the Ninth Circuit in *Miller v. Christopher*, 887 F. 2d 902 (9th Cir 1989)

affirmed a determination of the district court that the settlement reached in that case was made in good faith and therefore barred claims for contribution from the settling tortfeasors. The Ninth Circuit approved the district court's use of California law to apply the standard for determining whether the settlement was in good faith, notwithstanding the fact that the court pointed out that in maritime cases state law is not controlling. 887 F. 2d at 905.

The difference between the rule developed in *Self* and the approach taken by the Ninth Circuit in *Christopher* is obvious. Under the *Self* rule a settlement, without more, bars contribution claims against the settling tortfeasor. Under the *Christopher* approach it is necessary for the district court to conduct an evidentiary hearing in an effort to approximate the value of the plaintiff's claim and to evaluate the relative degrees of fault among the defendants. After this expenditure of labor there may follow an appeal with a full review by the appellate court of the actions of the district judge. Clearly this is an impractical approach. Boca Grande Club submits that the *Christopher* approach is wasteful and unworkable. Obviously, no rational party would pay several hundred thousand dollars to settle his dispute with a plaintiff if the result was that he had to participate in a trial to ascertain whether the settlement met a "good faith" criteria followed by an appeal taken by a disgruntled non-settling tortfeasor trying to protect its right of contribution.

In *Great Lakes Dredge & Dock Company v. Tanker Robert Watt Miller*, 1990 A.M.C. 2247 (M.D. Fla. 1990), Great Lakes sought to avoid the effect of the settlement bar rule of *Self* by arguing that the court should determine relative degrees of fault between the various tortfeasors. The district court refused and noted:

The matters in need of resolution in order to determine contribution are so voluminous that to resolve them, if they are resolvable at all, would involve the staging of the trials that the parties sought to avoid through settlement. Great Lakes labeled 'unworthy of consideration' Chevron's argu-

ment concerning this burden. The Court views the matter otherwise. Setting aside the destructive impact on future settlements that the precedent of such a trial would have, the Court is persuaded that Great Lakes' proposal would invest an enormous amount of judicial resources in an essentially futile enterprise. In addition to the criticism leveled previously herein, the Court observes that the persons with the greatest knowledge of the relevant issues are the claimants who have settled their claims, and those persons no longer are parties to these actions. Their absence from the proposed proceedings would reduce the reliability and accuracy of the determinations reached; their presence would be an unjustified burden. 1990 A.M.C. at 2253, n 4.

If a settlement between a plaintiff and one of several tortfeasors in a maritime personal injury case is subject to judicial inquiry to determine whether or not it is in "good faith" or reasonable in light of the ultimate value of the plaintiff's claims and the potential liability of the various defendants, which determination will obviously be subject to appeal, then there will be few if any settlements concluded. A settlement subject to "good faith" will not permit the settling party to close his file and know that his involvement in the controversy is at an end. That is true even if the district courts had the manpower and time to judicially oversee settlements and the appellate courts resources ample to review all such determinations of the trial courts. The rule developed by the Eleventh Circuit in *Self* is simple, reasonable and practical. It permits a settling tortfeasor to close his file knowing that all claims for contribution against him are barred; he is no longer involved in the controversy and need have no concerns about its ultimate outcome. That rule must be applied to the settlement between Boca Grande Club and the Stipulating Claimants and summary judgment must be awarded in favor of Boca Grande Club as to the claims for indemnity and contribution of FPL and O'Day.

D. The Settlement has Been Approved.

The settlement between Boca Grande Club and the Stipulating

Claimants has been approved by the principal claimants and the Circuit Court for Palm Beach County. Attached as Exhibit B is a copy Motion for Approval of Settlement filed (in the Circuit Court for Palm Beach County) by Stephanie J. Polackwich and Alan S. Polackwich, Sr., two of the Stipulating Claimants. These claimants point out to the court that the settlement is in the best interest of "all claimants and survivors." Attached to the motion are the affidavits of individual Stipulating Claimants in which they inform the Circuit Court that they confirm their agreement to the settlement and the manner in which they have agreed to distribute the settlement proceeds. Each asks the Circuit Court to approve the settlement.

Boca Grande Club has been informed that the Circuit Court has held a hearing on the motion asking for approval of the settlement and thereafter entered an Order approving of the settlement. A copy of that order has been requested and will be filed upon receipt by Boca Grande Club.

Boca Grande Club submits that approval of the settlement by the Circuit Court establishes that the settlement was in "good faith" even though such approval is not necessary under the rule of *Self v. Great Lakes Dredge & Dock Co.*, 832 F. 2d 1540 (11th Cir 1987).

CONCLUSION

In view of the foregoing the Court should forthwith enter an order determining that neither Florida Power & Light Company nor The O'Day Corporation have claims for indemnity against Boca Grande Club, Inc. The order should further provide that the settlement between Boca Grande Club, Inc. and the individual Stipulating Claimants bars any claims for contribution that Florida Power & Light Company and The O'Day Corporation may otherwise have had. Upon the authority of *Self v. Great Lakes Dredge & Dock Company*, 832 F. 2d 1540 (11th Cir 1987) and the other authorities cited above, summary judgment should be entered in favor of Boca Grande Club, Inc. and against Florida Power &

Light Company and The O'Day Corporation upon the claims for indemnity and contribution.

Respectfully submitted,
MACFARLANE, FERGUSON,
ALLISON & KELLY

/s/ _____

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Tampa, Florida 33601
(813) 223-2411
Attorneys for Boca Grande Club, Inc.

(Certificate of service omitted in printing)

FULL AND COMPLETE GENERAL RELEASE

WHEREAS, on April 23, 1988, Robert J. Polackwich, M.D. and Jonathan Richards were in an accident on the navigable waters adjacent to Boca Grande, Florida; and

WHEREAS, as a result of said accident, Robert J. Polackwich, M.D. and Jonathan Richards died; and

WHEREAS, as a result of the deaths of Robert J. Polackwich, M.D. and Jonathan Richards, representatives of their respective estates filed lawsuits in the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida, against Boca Grande Club, Inc., and other defendants; and

WHEREAS, as the result of the accident which involved a 16' Prindle Catamaran owned by Boca Grande Club, Inc., Boca Grande Club, Inc. commenced an action in United States District Court, Middle District of Florida, Tampa Division, seeking exoneration from or limitation of liability pursuant to the Limitation of Liability Act, 46 U.S.C. §181 et seq; and

WHEREAS, the representatives of the estates of Robert J. Polackwich, M.D. and Jonathan Richards, and others (all of whom are hereinbelow identified as "Claimants") filed claims in the limitation of liability action pending in United States District Court; and

WHEREAS the Plaintiffs in the actions pending in the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida, and all of those who have filed claims for damages for the deaths of Robert J. Polackwich, M.D. and Jonathan Richards in the limitation action pending in United States District Court, Middle District of Florida, Tampa Division, desire to settle all of their claims against Boca Grande Club, Inc. and its vessel;

Exhibit "A"

ACCORDINGLY, KNOW ALL MEN BY THESE PRESENTS:

Receipt of the sum of Two Hundred Twenty Five Thousand and No/100 Dollars (\$225,000.00) lawful money of the United States to them in hand paid by Boca Grande Club, Inc., is hereby acknowledged by:

Alan S. Polackwich, Sr.

Alan S. Polackwich, Sr. as personal representative of the estate of Dr. Robert J. Polackwich, Deceased

Stephanie J. Polackwich

Stephanie J. Polackwich as personal representative of the estate of Jonathan Richards, Deceased

Stephanie J. Polackwich as mother and natural guardian of Robert Jamison Polackwich, a minor

Trudy Bergund, as mother and natural guardian of Nathan Polackwich, a minor

Alphonsus J. Polackwich

Alphonsus J. Polackwich as personal representative of the estate of Eleanor A. Polackwich, Deceased.

All of the foregoing individuals are hereinafter collectively referred to as "Claimants."

Claimants further acknowledge receipt of the aforesaid sum of money as total consideration for any and all claims by Claimants against the Released Parties only. Claimants have released, remised, acquitted and forever discharged, and by this Full and Complete General Release do release, remise, acquit and forever discharge only Boca Grande Club, Inc., and its successors and assigns, and the 16' Prindle Catamaran Sailing Vessel Hull No.

SUR06214M82E, together with its owner, charterer, operator, crew and insurers, collectively hereinafter referred to as the Released Parties, of and from all manner of actions, torts, injuries, causes of action, damages, contracts, claims, costs, expenses and demands whatsoever in law, in equity, in admiralty or otherwise, which Claimants, individually, jointly, severally or any of them, ever had, now have, or hereafter can, shall or may have against the Released Parties only upon, by reason of, or in any way growing out of any matter whatsoever arising from the injury and deaths of Robert A. Polackwich, M.D., and Jonathan Richards while aboard the 16' Catamaran Sailing Vessel on April 23, 1988.

This Full and Complete General Release as to the Released Parties only includes any claim by Claimants against the Released Parties only for any and all injuries, loss and damage, known or unknown, directly or indirectly sustained or suffered by Claimants, individually, jointly, severally, or any of them, arising out of or connected with a collision between the mast of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E and power lines crossing the navigable waters of Gasparilla Pass, including the rental from Boca Grande Club, Inc., usage, or operation of the 16' Prindle Catamaran Sailing Vessel, Hull No. SUR06214M82E on April 23, 1988, for which claims have been made against the Released Parties only in those certain lawsuits now pending in United States District Court, Middle District of Florida, Tampa Division, and the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, which cases are, respectively, styled as:

**UNITED STATES DISTRICT COURT,
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Case No.: 88-1636-Civ-T-17A
IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT

OF
BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION
OF LIABILITY AS OWNER OF A 16'
PRINDLE CATAMARAN SAILING VESSEL,
HULL NO. SUR06214M82E

**IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, STATE OF FLORIDA, IN AND FOR
PALM BEACH COUNTY, FLORIDA, CIVIL DIVISION**

Case No. CL89-9670 AH

STEPHANIE J. POLACKWICH, as Personal Representative
of the Estate of JONATHAN RICHARDS, deceased,
Plaintiff,

vs.

FLORIDA POWER AND LIGHT COMPANY, O'DAY
CORPORATION, PRINDLE CATAMARAN, INC.,
SURFGLAS INCORPORATED, LEAR-SIEGLER MARINE,
LEAR-SIEGLER, INC., CATALINA BOATS MANUFACTUR-
ING COMPANY, CATALINA YACHTS INC., PERFORMANCE
CATAMARAN, INC., BANGOR PUNTA MARINE, BANGOR
PUNTA CORPORATION, and BOCA GRANDE CLUB, INC.,
Defendants.

ALAN S. POLACKWICH, SR., as Personal Representative

of the Estate of ROBERT J. POLACKWICH, deceased,
Plaintiff,

vs.

FLORIDA POWER AND LIGHT COMPANY, O'DAY
CORPORATION, PRINDLE CATAMARAN, INC.,
SURFGLAS INCORPORATED, LEAR-SIEGLER MARINE,
LEAR-SIEGLER, INC., CATALINA BOATS MANUFACTUR-
ING COMPANY, CATALINA YACHTS INC., PERFORMANCE
CATAMARAN, INC., BANGOR PUNTA MARINE, BANGOR
PUNTA CORPORATION, and BOCA GRANDE CLUB, INC.,
Defendants.

Claimants do hereby consent and agree that all of their claims and complaints against the Released Parties only made and outstanding against the Released Parties only in the aforementioned lawsuits shall be forthwith dismissed with prejudice. This Full and Complete General Release as to the Released Parties only does not in any way release or discharge FLORIDA POWER AND LIGHT COMPANY, O'DAY CORPORATION, PRINDLE CATAMARAN, INC., SURFGLAS INCORPORATED, LEAR-SIEGLER MARINE, LEAR-SIEGLER, INC., CATALINA BOATS MANUFACTURING COMPANY, CATALINA YACHTS INC., PERFORMANCE CATAMARAN, INC., BANGOR PUNTA MARINE, BANGOR PUNTA CORPORATION, or their insurers. Claimants hereby specifically reserve all of their claims and actions against said parties, and nothing contained in this Full and Complete General Release shall be construed or deemed to be a release of Claimants' claims and actions against any of said parties.

It is expressly understood and agreed that the acceptance of the aforesaid sum of money is in full accord and satisfaction of disputed claims by and between the parties to this settlement only, which claims are set out in the above identified lawsuits and that the payment of the aforesaid sum is not an admission of liability on the part of the Released Parties, each of whom expressly denies liability.

In further consideration of the aforesaid sum of money being

paid to Claimants, Claimants, and each of them, do hereby covenant with and represent to the Released Parties that Claimants are the owners of the claims as to the Released Parties set forth in the above identified lawsuits.

In witness whereof, each of the Claimants hereinabove identified has executed this Full and Complete General Release as to the Released Parties only with effect as to each as and from the day and date of their respective signatures.

/s/ _____
Alan S. Polackwich, Sr.

/s/ _____
Alan S. Polackwich, Sr. As
Personal Representative of the
Estate of Dr. Robert J. Polackwich

State of Florida
County of Indian River

Personally appeared Alan S. Polackwich, Sr., an individual well known to me, who upon being duly sworn, deposed and said that he is the individual signing the above and foregoing Full and Complete General Release and that he signed said release both as an individual and in his capacity as the personal representative of the estate of Dr. Robert J. Polackwich and that he signed said release in his individual and representative capacities with full authority to so act and that his signatures were his free act and deed for all of the purposes expressed in said release.

Witness my hand and seal in the county and state aforementioned on this 3d day of December, 1990.

/s/ _____
Notary Public
State of Florida at Large

My commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. NOV. 11, 1994
BONDED THRU GENERAL INS. UND.

/s/ _____
Stephanie J. Polackwich

/s/ _____
Stephanie J. Polackwich as mother
and Natural Guardian of Robert
Jamison Polackwich, a minor

/s/ _____
Stephanie J. Polackwich as
Personal Representative of the
estate of Jonathan Richards

State of Florida
County of Hillsborough

Personally appeared Stephanie J. Polackwich, an individual well known to me, and upon being duly sworn, deposed and said that she is the mother and natural guardian of Robert Jamison Polackwich and the personal representative of the estate of Jonathan Richards and that she signed the foregoing Full and Complete General Release individually and as mother and natural guardian of Robert Jamison Polackwich and as the personal representative of the estate of Jonathan Richards, and that she signed the said release in her individual and representative capacities with full authority to so act and that her signatures were her free act and deed for all of the purposes expressed in said release.

Witness my hand and seal in the county and state aforementioned on this 4th day of December, 1990.

/s/ _____
Notary Public
State of Florida at Large

My Commission Expires:
 NOTARY PUBLIC STATE OF FLORIDA.
 MY COMMISSION EXPIRES: MAR. 20, 1994.
 BONDED THRU NOTARY PUBLIC UNDERWRITERS.

/s/ _____
 Trudy Bergund as mother and
 Natural Guardian of Nathan
 Polackwich, a minor

State of Florida
 County of Indian River

Personally appeared Trudy Bergund, an individual well known to me, and upon being duly sworn, deposed and said that she is the mother and natural guardian of Nathan Polackwich, a minor, and that she signed the above and foregoing Full and Complete General Release in her capacity as mother and guardian of Nathan Polackwich and that she is fully authorized to so act and her signature is her free act and deed for all of the purposes expressed in said release.

Witness my hand and seal in the county and state aforementioned on this 3rd day of December, 1990.

/s/ _____
 Notary Public
 State of Florida at Large

My Commission Expires:
 Notary Public
 State of Florida at Large
 My Commission Expires Jan 20, 1992

/s/ _____
 Alphonsus J. Polackwich

/s/ _____

Alphonsus J. Polackwich as
 Personal Representative of the
 estate of Eleanor A. Polackwich

State of Florida
 County of Indian River

Personally appeared Alphonsus J. Polackwich, an individual well known to me, and upon being duly sworn, deposed and said that he is the individual signing the above and foregoing Full and Complete General Release and that he signed said release both as an individual and in his capacity as the personal representative of the estate of Eleanor A. Polackwich and that he signed said release in his individual and representative capacities with full authority to so act and that his signatures were his free act and deed for all of the purposes expressed in said release.

Witness my hand and seal in the county and state aforementioned on this 3d day of December, 1990.

/s/ _____
 Notary Public
 State of Florida at Large

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
 MY COMMISSION EXP. NOV. 11, 1994
 BONDED THRU GENERAL INS. UND.

Acceptance of Full and Complete General Release

Boca Grande Club, Inc., on behalf of the Released Parties, hereby accepts the above and foregoing Full and Complete General Release and acknowledges, accepts, and agrees to all of the provisions therein contained.

Boca Grande Club, Inc.

By: /s/ _____
Mary Keene, Manager

County of Charlotte
State of Florida

Personally appeared Mary Keene, an individual well known to me, who upon being duly sworn, deposed and said that she is the manager of Boca Grande Club, Inc. and that she acknowledges receipt of and accepts the above and foregoing Full and Complete General Release and she is fully authorized to execute the foregoing acceptance on behalf of Boca Grande Club, Inc.

Witness my hand and seal, this _____ day of _____, 1991

/s/ _____
Notary Public, State of Florida

My commission expires:
NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: AUG. 27, 1993.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

(Exhibit B omitted in printing)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CASE NO. 88-1636-Civ-T-17A
IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT

OF

BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION
OF LIABILITY AS OWNER OF A 16' PRINDLE
CATAMARAN SAILING VESSEL, HULL
NO. SUR06214M82E

**MEMORANDUM OF LAW IN OPPOSITION TO
THE BOCA GRANDE CLUB'S MOTION
FOR SUMMARY JUDGMENT**

Pursuant to Rule 56, Federal Rules of Civil Procedure, and Local Rule 3.01, Rules of the District Court for the Middle District of Florida, Claimant, Florida Power & Light Company ("Florida Power & Light") hereby files its memorandum of law in opposition to the Boca Grande Club, Inc's ("Boca Grande Club") motion for summary judgment as to Florida Power & Light's claim for contribution.

**PROCEDURAL POSTURE OF THE
MOTION FOR SUMMARY JUDGMENT**

This action was instituted by the filing of a petition for limitation of or exoneration from liability by the Boca Grande Club. This action arises out of a maritime accident which occurred on April 23, 1988, when a sailboat occupied by Robert J. Polackwich and Jonathan Richards came into contact with overhead electrical power lines near Boca Grande, Florida. The sailboat involved in

the incident was owned and maintained by the Boca Grande Club and had been rented by the Boca Grande Club's sailing concession manager to Polackwich and Richards. The sailboat was manufactured by the O'Day Corporation or its predecessor-in-interest. The overhead electrical power lines in question were owned and maintained by Florida Power & Light.

The representatives of the Estates of Polackwich and Richards instituted wrongful death actions in Florida State Circuit Court. Those state court actions initially named Florida Power & Light and the O'Day Corporation as defendants. Shortly after Florida Power & Light filed its third-party action against the Boca Grande Club in those state actions, the Boca Grande Club instituted this limitation of liability action pursuant to 46 U.S.C. §181 et seq. Claims were filed against the Boca Grande Club by numerous claimants, including the Estate of Robert Polackwich, the Estate of Jonathan Richards, the O'Day Corporation, and Florida Power & Light.

Ultimately, the Boca Grande Club entered into a settlement agreement with the Estates of Polackwich and Richards. The terms of that settlement are set forth in documents previously filed with the Court.

This matter is now before the Court for consideration of the Boca Grande Club's motion for summary judgment. In essence, the Boca Grande Club argues that the Court should rule as a matter of law that the settlement made between the Boca Grande Club and the Estates of Polackwich and Richards operates to bar Florida Power & Light's claim for contribution against the Boca Grande Club.¹ The motion must be denied because the Boca Grande Club has misinterpreted the law, and because there are genuine issues of material fact which preclude summary judgment. Specifically, general maritime law requires that the settlement be made in good

1. The Boca Grande Club also argues that Florida Power & Light's indemnity claim is barred as a matter of law. Florida Power & Light does not oppose the Boca Grande Club's motion for summary judgment with respect to the indemnity claim.

faith in order to bar Florida Power & Light's right to seek contribution from the Boca Grande Club. The question of whether the settlement between the Boca Grande Club and the Estates was made in good faith raises genuine issues of material fact which preclude summary judgment.

THE APPLICABLE LAW REQUIRES THE DENIAL OF THE BOCA GRANDE CLUB'S MOTION FOR SUMMARY JUDGMENT

I. The Boca Grande Club has not satisfied the legal requirements for a summary judgment.

Summary judgment is appropriate only when the Court is satisfied "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), F.R.Civ.P. In making this determination, the Court must view all of the evidence in a light most favorable to the non-moving party. *Samples on Behalf of Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). Furthermore, the moving party has the initial burden of establishing the absence of a genuine issue of fact. *Clark v. Coats & Clark, Inc.*, No. 908925, Slip Op. at 2911, 2915 (11th Cir. April 19, 1991). Only when that burden has been met does the burden shift to the non-moving party to demonstrate that there is a material issue of fact that precludes summary judgment. *Id.*

The Boca Grande Club has not established the absence of a genuine issue of material fact. Pursuant to general maritime law, the settlement between the Boca Grande Club and the Estates will only operate as a bar to Florida Power & Light's claim for contribution if the Court finds that it was made in good faith. This determination involves material questions of fact that may not be resolved in a motion for summary judgment. For instance, whether Boca Grande's settlement with the Plaintiffs reasonably reflects the parties proportionate liability is a material question of fact that precludes summary judgment, and as a result, the Boca Grande Club's motion for summary judgment must be denied.

II. Under general maritime law, the settlement between the Boca Grande Club and the Estates must be in good faith in order to bar Florida Power & Light's contribution claim.

The Boca Grande Club asserts in its motion for summary judgment that the Eleventh Circuit implicitly rejected the rule that a settlement must be made in good faith in order to bar claims for contribution asserted by a non-settling defendant. In making this argument, the Boca Grande Club relies upon language in *Self v. Great Lakes Dredge & Dock Co.* which acknowledges that if a settlement bars a claim for contribution, there may be a disparity in the percentage of payment as between the settling and nonsettling tortfeasor. 832 F.2d 1540, 1547-8 *rehearing denied* 837 F.2d 1095 (11th Cir. 1987), *cert. denied* 486 U.S. 1033, 108 S.Ct. 2017, 100 L.Ed.2d 604 (1988). However, nowhere in *Self* did the court expressly reject the good faith standard. Furthermore, a more recent, decision by the Ninth Circuit indicates that the Eleventh Circuit has adopted the rule requiring that a settlement be made in good faith in order to operate as a bar to a nonsettling defendant's claim for contribution. *See Miller v. Christopher*, 887 F.2d 902 (9th Cir. 1989).

In *Miller v. Christopher*, the court held that under general maritime law a "good faith" settlement between a tortfeasor and a plaintiff bars a joint tortfeasor's claim of contribution. 867 F.2d at 907. The court pointed out that the case law is in some disarray over this issue due to the tension between the policy favoring full recovery for the plaintiff and the policy favoring final and efficient dispute resolution. *Id.* at 904. According to the court in *Miller*, the confusion over this issue is further demonstrated by the American Law Institute's inability to reach a consensus. The court explained that the Restatement (Second) of Torts §886A, comment m, delineates three possible approaches to the situation of the settling tortfeasor:

- (1) allowing an action for contribution against a settling tortfeasor by any other tortfeasor who has paid more than his equitable share of the plaintiff's claim; (2) imposing a

bar to contribution claims against a settling tortfeasor, perhaps in conjunction with a requirement that the settlement be in "good faith"; and (3) reducing the claim of the plaintiff by the pro rata share of a settling tortfeasor's liability for damages, which has the effect of eliminating any reason to sue a settling tortfeasor for contribution.

Id. at 905. According to the court, the Restatement determined that the first approach was the "fairest solution", although it tended to discourage settlements. It was also noted in comment m that although the second approach encouraged settlements, it allowed for collusion between the settling tortfeasor and the plaintiff. However, the court stated that the "imposition of a prophylactic 'good faith' rule can help [prevent collusion], but such a rule calls 'the finality of the settlement into question until a court has passed on the issue of good faith.'" *Id.* The court also indicated that The Uniform Comparative Fault Act adopted the third approach because it supported the goals of the comparative negligence system. *Id.*

Additionally, the *Miller* decision held that the First and Eleventh Circuits have adopted the second approach and cited the Eleventh Circuit's decisions in *Ebanks v. Great Lakes Dredge & Dock Co.* and *Self. Miller*, 887 F.2d at 905-6 (citing *Ebanks*, 688 F.2d 716 (11th Cir. 1982), *cert. denied* 460 U.S. 1083, 103 S.Ct. 1774, 76 L.Ed.2d 346 (1983) and *Self*, 832 F.2d at 1546). The court in *Miller* agreed with the Eleventh Circuit's adoption of the second approach and held that a settlement, if it is found to be in good faith, bars a claim for contribution. *Id.* at 907. In reaching this decision, the court balanced the competing policies of avoiding collusion between the plaintiff and the settling defendant and promoting settlements. *Id.*

The good faith standard has been applied in numerous other cases in which the courts relied on various criteria to determine whether the settlements were made in good faith. *See e.g. Carpenter v. U.S.*, 710 F.Supp. 747, 751-3 (D.Nev. 1988) (factors to consider include (1) the amount paid, (2) the allocation of the

proceeds among the plaintiffs, (3) the insurance policy limits of settling defendants, (4) the financial condition of settling defendants, and (5) the existence of collusion, fraud, or tortious conduct aimed to injure the interests of non-settling defendants); *Tech-bilt, Inc. v. Woodward - Clyde & Associates*, 698 P.2d 159, 166 (Cal. 1985) (whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportionate share of comparative liability for the plaintiff's injuries); *In re MGM Grand Hotel Fire Litigation*, 570 F.Supp. 913, 927 (D.Nev. 1983) (good faith settlement by tortfeasor establishes affirmative defense to any claims for contribution); *Fuquay v. General Motors Corp.*, 518 F.Supp. 1065, 1069 (M.D. Fla. 1981) (pursuant to Section 768.31(5), *Florida Statutes*, a settlement must be in good faith in order to bar contribution claim); *Commercial Union Insurance Co. v. Ford Motor Co.*, 640 F.2d 210, 213 (9th Cir. 1981).

The Boca Grande Club claims that the approach requiring that settlements be made in good faith is "wasteful and unworkable". This claim is obviously defeated by the substantial case law in which the good faith standard has been applied. Significantly, the approach advocated by the Boca Grande Club does not follow any of the three alternatives recommended in the Restatement.

The good faith requirement adopted by the courts simply ensures that settlements are made with the intent to effectively resolve disputes to the mutual advantage of the settling parties and not to injure or exclude the non-settling party. The Court can ensure that a settlement is made in good faith by conducting a hearing to determine the relative degrees of fault and the strategic motivations for settling, and then ruling on whether the amount of the settlement is within the reasonable range of the Boca Grande Club's respective share of liability in light of the amount of damages alleged by the Estates in this case. See *Miller*, 807 F.2d at 907. In the alternative, the Court can determine the proportionate shares of liability in the wake of the state court action. In light of the fact that the federal action is stayed pending the resolution of the state court action, the Court may allow the non-settling defendants to assert contribution claims against the Boca Grande Club and then

determine whether the settlement reasonably reflects the Boca Grande Club's share of liability after the verdict is rendered in state court. *Id.* Pursuant to case law and policy considerations, the Court must find that the settlement amount is reasonably proportionate to the settling defendant's share of liability in order to hold that the settlement was made in good faith. See e.g. *Miller v. Christopher*, 887 F.2d at 908; *Tech-bilt, Inc. v. Woodward-Clyde & Associates*, 698 P.2d 159, 166 (Cal. 1985).

Furthermore, the good faith rule does not discourage settlements. If a tortfeasor and a plaintiff perceive a settlement as beneficial, they will pursue the settlement even if such settlement is subject to an evaluation by the court. Clearly, the only settlements which may be discouraged by the good faith standard are those settlements that are not made in good faith. The primary case cited by the Boca Grande Club for the proposition that the good faith rule discourages settlements involves a contribution claim asserted by a settling defendant who was unhappy with its settlement against another settling defendant, based upon the argument that it paid more in the settlement than its percentage of liability. See *Great Lakes Dredge & Dock Co. v. Robert Miller*, 1990 A.M.C. 2247, 2251 (M.D.Fla. 1990). In contrast, Florida Power & Light has not settled with the Estates and only seeks to prevent the Boca Grande Club from avoiding its responsibility for its share of fault by entering into a settlement that was not made in good faith.

Although the Circuits are in conflict, it is clear from the decisions in *Miller* and *Self* that the First, Ninth, and Eleventh Circuits have adopted the good faith requirement for settlements in maritime actions. Accordingly, the settlement between the Boca Grande Club and the Estates must be found to be in good faith in order to bar Florida Power and Light's contribution claim.

III. The Boca Grande Club has misinterpreted the law in regard to whether a settlement must be made in good faith in order to bar a non-settling defendant's claim for contribution.

In addressing the effect of a settlement on contribution claims

between potential tortfeasors, the courts have attempted to resolve three important and competing policies:

- (1) full recovery for the plaintiff;
- (2) proportionate liability pursuant to the doctrine of comparative fault; and
- (3) promoting settlement.

See e.g. *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 99 S.Ct. 2753, 61 L.Ed.2d 521 (1979); *Self v. Great Lakes Dredge & Dock Co.*, 832 F.2d 1540, rehearing denied 837 F.2d 1095 (11th Cir. 1987), cert. denied 486 U.S. 1033, 108 S.Ct. 2017, 100 L.Ed.2d 604 (1988); *Drake Towing Co., Inc. v. Meisner Marine Construction Co.*, 765 F.2d 1060, rehearing denied 773 F.2d 1239 (11th Cir. 1985); *Ebanks v. Great Lakes Dredge & Dock Co.*, 688 F.2d 716 (11th Cir. 1982), cert. denied 460 U.S. 1083, 103 S.Ct. 1774, 76 L.Ed.2d 346 (1983); *Luke v. Signal Oil & Gas Co.*, 523 F.2d 1190 (5th Cir. 1975).

The United States Eleventh Circuit Court of Appeals in *Ebanks* held that under maritime law, a plaintiff may sue any or all of the defendants in an action and is entitled to full recovery from any one of them regardless of the percentage of fault. 688 F.2d at 718 [citing *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 99 S.Ct. 2753, 61 L.Ed.2d 521 (1979) (a plaintiff in a maritime action can recover the full amount from any of the tortfeasors pursuant to the remedial policy of full recovery for the plaintiff)]. In *Ebanks*, the court held that the lower court erred in apportioning the percentage of fault between the defendant at trial and the settling defendant. Additionally, the court emphasized that if the defendant at trial was forced to pay damages that exceeded its percentage of fault, it could seek contribution from the settling defendant in a different action. *Id.*, at 722. Accordingly, the Eleventh Circuit in *Ebanks* allowed contribution against a settling defendant in a maritime action pursuant to the policy of providing full recovery for the plaintiff.

Similarly, in *Drake Towing Co., Inc. v. Meisner Marine Construction Co.*, where the issue was whether the court could decrease the defendant's liability by considering the settling defendant's percentage of negligence, the court held that as in *Ebanks* the plaintiff is entitled to recover the full amount of damages from the defendant at trial. The court further emphasized that the defendant at trial has the right to seek contribution from the settling defendant and may implead that defendant in order to allocate liability in a single action. 765 F.2d at 1067-8. The court balanced the competing policies of full recovery for the plaintiff and comparative fault and held that the right to seek contribution was not barred by a settlement between the plaintiff and the settling defendant. *Id.*

The rule set forth in *Luke v. Signal Oil & Gas Co.* and relied upon by the court in *Self* does not control the court's decision in this case for two reasons. First, the court in *Self* did not address the issue of whether a settlement must be in good faith. Second, the rule set forth by the court in *Luke* was based on Louisiana law, not maritime law, and general maritime law is the law that must be applied in this case. See *Miami Valley Broadcasting Corp. v. Lang*, 429 So.2d 1333 (Fla. 4th DCA 1983) ("It is beyond question that the wrong complained of was a maritime tort, occurring in navigable waters, which makes the claim subject to federal admiralty jurisdiction."); *Still v. Dixon*, 337 So.2d 1033 (Fla. 2d DCA 1976) ("... it is maritime law, not state law, that is the substantive law applied in maritime torts accruing on navigable waters in this country, irrespective of whether the action is brought in a state or federal court.") Accordingly, the Boca Grande Club erred in relying solely on the court's decision in *Self* to resolve the question of whether a "good faith" settlement bars a claim of contribution under maritime law, and it is clear that the courts are imposing the good faith requirement recommended in the Restatement in order to allow a settlement to bar a claim for contribution.

IV. Whether the settlement between the Boca Grande Club and the Estates was made in good faith creates genuine issues of material fact which preclude summary judgment.

In *Miller*, the court applied California's standard for good faith in an action under general maritime law. 882 F.2d at 907-8. The court ruled, that if the amount of the settlement falls within the "ballpark" of the defendant's liability, it is deemed a good faith settlement. The court reasoned that such a standard would best serve the competing policies of avoiding collusion between the parties, allowing for comparative fault and full recovery, and encouraging settlements. In making the determination of whether the settlement was made in good faith, the court recognized that the settlement need not represent the actual degrees of liability. *Miller*, 887 F.2d at 908. Rather, it was noted by the court that settlements are often discounted to reflect the cost of trial or the uncertainties of the outcome of a trial. *Id.* However, the court held that the settlement must be a good faith determination of the parties' relative liability and must be more than a bargain with the intent to avoid a claim for contribution or indemnity. *Id.* See also *Owen v. United States*, 713 F.2d 1461, 1466 (9th Cir. 1983); *Commercial Union Insurance Co. v. Ford Motor Co.*, 640 F.2d 210, 213 (9th Cir.), cert. denied 454 U.S. 858, 102 S.Ct. 310, 70 L.Ed.2d 154 (1981); *Carpenter v. U.S.*, 710 F.Supp. 747, 751-3 (D.Nev. 1988).

The issue of whether the settlement between the Boca Grande Club and the Estates represents a good faith determination of the parties' relative liability involves questions of fact. For instance, the court must determine whether the amount of the settlement, which is Two Hundred Twenty-Five Thousand Dollars (\$225,000.00), reasonably reflects the Boca Grande Club's proportionate share of liability. The record is replete with evidence of the Boca Grande Club's potential liability. The following undisputed facts are relevant to the Boca Grande Club's proportionate share of liability:

1. Boca Grande Club, Inc. owned and maintained the sixteen foot (16') Prindle catamaran bearing hull number SUR06214M82E which is involved in this limitation proceeding ("the catamaran").

- 2 The catamaran was equipped with a mast which was capable of conducting electricity if it came into contact with a source of

electrical power. (Deposition of Stephen Ferguson at p.18, lines 9-12; p.27, lines 12-14, previously filed with the Court).

3. Sailboats equipped with masts which do not conduct electricity have been available since at least 1984 or 1985, a period of time well prior to this incident. (Deposition of Gary Mansell at pp.6-7, 15, previously filed with the Court).

4. On April 23, 1988, Robert J. Polackwich, Jr. ("Polackwich") and Jonathan Richards ("Richards") rented the catamaran from Boca Grande Club, Inc. in Boca Grande, Florida.

5. On April 23, 1988, Mr. Stephen Ferguson ("Ferguson") was the manager of the sailboat rental concession operated by the Boca Grande Club, Inc. By virtue of his position, Ferguson was empowered to make decisions regarding the circumstances under which sailboats owned by the Boca Grande Club would be rented and to whom. (Deposition of Stephen Ferguson at p. 22, lines 6-14).

6. Prior to renting the catamaran to Polackwich and Richards, Ferguson did not conduct a sea trial or other procedures to determine Richards' or Polackwich's sailing skills. Rather, Ferguson relied on Richards apparent familiarity with sailing as demonstrated by a single conversation covering the nomenclature of sailing and the like. (Deposition of Stephen Ferguson at p.9, lines 23-25; p.10, lines 1-25; p.11, lines 1-25; p.12, lines 1-25; p.14, lines 23-25; p.15, lines 1-10; p.49, line 15; p.50, lines 1-5.).

7. At approximately 1:00 p.m. on April 23, 1988, Polackwich and Richards were severely shocked when the catamaran's mast made contact with overhead electrical distribution lines owned and maintained by Florida Power and Light.

8. Prior to renting the catamaran to Polackwich and Richards, Ferguson knew that sailing in the vicinity of the accident scene was an unsafe practice because it was possible to hit the overhead electrical distribution lines with a sailboat mast. (Deposition of Stephen Ferguson at p.13, lines 11-19; p.41, lines 19-25; p.42, lines 1-2).

9. Prior to renting the catamaran to Polackwich and Richards, Ferguson knew that Polackwich and Richards could sail the catamaran into the area where the accident occurred. (Deposition of Stephen Ferguson at p.37, lines 13-18).

10. Despite this knowledge, Ferguson failed to warn Polackwich and Richards of the existence of the overhead electrical distribution lines (Deposition of Stephen Ferguson at p.13, lines 14-25; p.14, lines 1-18) or about the dangers of sailing the catamaran near the overhead electrical distribution lines (Deposition of Stephen Ferguson at p.19, lines 4-7).

11. Despite this knowledge and his limited familiarity with the sailing skills of Polackwich and Richards, Ferguson made no effort to stop or collect them as they sailed out of sight toward the north in the general direction of the accident scene (Deposition of Stephen Ferguson at p.21, lines 11-15; p.43, lines 18-25; p.44, lines 1-10).

12. In addition, Ferguson provided no instruction to Polackwich and Richards regarding means or methods of extricating themselves from any danger they encountered. Similarly, the Boca Grande Club, Inc. did not equip the catamaran with any aids to navigation or any means with which Polackwich and Richards could extricate themselves from danger, such as a radio or emergency safety instruction (Deposition of Stephen Ferguson at p.30, lines 18-25; p.31, lines 1-11).

13. The Boca Grande Club, Inc. failed to equip the catamaran with a mast which could be easily dropped while underway even though such equipment was available. (Deposition of Stephen Ferguson at p.31, lines 22-25; p.32, lines 1-5; Deposition of Gary Mansell at pp.13-14). As a result the mast of the catamaran could not be lowered except by the expenditure of extraordinary effort (Deposition of Stephen Ferguson at p.25, lines 1-14).

In light of this evidence, genuine issues of material fact exist with respect to whether the Boca Grande Club's proportionate

share of liability is reasonably reflected in its settlement with the Estates.

The court must also consider whether the settlement represents a good faith effort to resolve the dispute before a settlement can be asserted as a defense to a non-settling defendant's claim for contribution. In *Carpenter v. U.S.*, the court set forth various factors to consider in determining whether a settlement was made in good faith. 710 F.Supp. at 751-3. The factors include: (1) the amount paid in the settlement; (2) the insurance policy limits of the settling defendant; (3) the financial condition of the settling defendant; and (4) the existence of collusion, fraud, or tortious conduct aimed to injure the interests of the non-settling defendants.

In this case, the Boca Grande Club paid only Two Hundred Twenty-Five Thousand Dollars (\$220,000.00) its settlement with the Estates. However, the Boca Grande Club has applicable insurance in the amount of One Million Dollars (\$1,000,000.00). (See Petitioner, the Boca Grande Club's answer to interrogatory five of the standard interrogatories and answer to interrogatory one of the interrogatories propounded by Alan S. Polackwich, Sr., as Personal Representative of the Estate of Robert J. Polackwich attached hereto as Exhibit "A"). Additionally, the present ownership and maintenance of the Boca Grande Club indicates that the Boca Grande Club, Inc., is solvent and has the financial ability to pay in this case. The amount of the settlement creates a genuine issue of material fact with respect to the question of good faith in light of the Boca Grande Club's insurance policy limits and its apparent financial ability to pay.

Additionally, the underlying motivations of this settlement are at issue. Although Florida Power & Light disputes the rationality of the Estates' position, counsel for the Estates have demanded in excess of Twenty Million Dollars (\$20,000,000.00) from Florida Power & Light Company. In light of such a demand and the above analysis of the Boca Grande Club's potential liability, the settlement at issue must be seen as a token from the Estates' perspective. The possibility of collusion on the part of the Estates and the

Boca Grande Club in an attempt to serve interests that are completely irrelevant to the parties relative degrees of liability creates an issue of fact as to whether the settlement was made in good faith. Such interests might include the Boca Grande Club's interest in using a settlement as a means of avoiding claims for contribution and the Estates' interest in avoiding the non-jury limitation of liability proceedings and focusing on a state court jury trial as a more beneficial forum in which to present their claims. The fear of delayed adjudication cannot be considered because the court appeared ready to try this case on a previous docket.

Accordingly, because genuine issues of material fact exist as to whether the settlement was made in good faith, the Boca Grande Club's motion for summary judgment against Florida Power & Light's claim for contribution must be denied.

CONCLUSION

In light of the recent decisions of the Ninth and Eleventh Circuits, the settlement between the Boca Grande Club and the Estates does not bar Florida Power & Light's claim for contribution unless the Court finds that the settlement was made in good faith. The good faith standard as applied by the courts requires that the settlement fairly reflect the relative degrees of liability and not be intended to foreclose a claim for contribution from a nonsettling defendant. As a result, the court must determine whether the settlement was made in good faith before the settling defendant can assert such a settlement as a bar to a claim for contribution. Because the question of whether the settlement was made in good faith involves genuine issues of material fact, the Boca Grande Club's motion for summary judgment must be denied.

Accordingly, for the reasons stated above, Florida Power & Light requests that this Court enter an order denying the Boca Grande Club's motion for summary judgment.

(Certificate of service omitted in printing)

/s/ _____

Christopher S. Knopik
Florida Bar Number 378348
Tami L. Baldinger
Florida Bar Number 0857513
YERRID, KNOPIK &
VALENSUELA, P.A.
101 E. Kennedy Boulevard
Barnett Plaza, Suite 2160
Tampa, Florida 33602
(813) 222-8222

(Exhibit A omitted in printing)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Case No. 88-1636-CIV-T-15A

IN ADMIRALTY

IN THE MATTER OF THE COMPLAINT OF

**BOCA GRANDE CLUB, INC. FOR
EXONERATION FROM OR LIMITATION
OF LIABILITY AS OWNER OF A 16'
PRINDLE CATAMARAN SAILING VESSEL,
HULL NO. SUR06214M82E**

ORDER

This action was brought by Boca Grande Club seeking limitation of liability for claims stemming from a maritime accident in which the mast of a sailboat struck a power line resulting in the deaths of two individuals. The estates of the deceased brought suit in state court against Florida Power and Light Corporation ("FPL") and the O'Day Corporation, the boat's manufacturer. Those defendants brought third party actions for contribution and indemnity against the Boca Grande Club which owned and leased the sailboat to the decedents. In response, Boca Grande brought this action.

Subsequent to the institution of this action, Boca Grande entered into settlement agreements with the decedents' estates. In its motion for summary judgment Boca Grande asserts that those settlement agreements bar FPL's claim for contribution and indemnity.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

In reaching a summary judgment decision the court must view the facts in the light most favorable to the non-moving party. *United of Omaha Life Ins. v. Sun Life Ins. Co.*, 894 F.2d 1555, 1558 (11th Cir. 1990).

Initially, the Court notes that FPL concedes that its claim for indemnity is barred as a matter of law. Accordingly, the only issue remaining before this Court is whether FPL's contribution claim is likewise barred.

The parties agree that this is an action invoking the maritime jurisdiction of this Court. Accordingly, maritime law of the Eleventh Circuit provides the applicable substantive law. Under the current case law, a joint tortfeasor is barred from seeking contribution from a settling joint tortfeasor and the plaintiff may recover the full amount of damages, minus the amount received from the settling defendant, from the remaining tortfeasors. *Self v. Great Lakes Dredge & Dock Company*, 832 F.2d 1540 (11th Cir. 1987), *cert. denied* 486 U.S. 1033 (1988).

FPL recognizes that the settlement bar exists, yet argues that the bar is only applicable if the settlement was entered in good faith. FPL argues that at least one other circuit has adopted a good faith requirement, see *Miller v. Christopher* (887 F.2d 902 (9th Cir. 1989)), and §886A of Restatement (Second) of Torts suggests that a good faith requirement may be warranted. However, the Eleventh Circuit has neither accepted or rejected a good faith requirement. *See Self*, 832 F.2d at 1547.

\ This Court declines to impose a good faith requirement where previously none existed. Accordingly, it is ORDERED:

1. Boca Grande's motion for summary judgement as to the claims of Florida Power and Light Company (D-174) is GRANTED and both the indemnity and contribution claims brought by Florida Power and Light Company, Inc. against Boca Grande Club, Inc. are barred by Boca Grande's settlement with the estates of the decedents.

2. The Clerk is directed to administratively close this file pending the outcome of the bankruptcy proceedings currently underway for defendant O'Day Corporation.

3. Boca Grande Club, Inc. is directed to report to the Court upon the conclusion of the O'Day Corporation's bankruptcy proceedings.

DONE AND ORDERED at Tampa, Florida this 26th day of March, 1992.

/s/ _____
WILLIAM J. CASTAGNA
UNITED STATES DISTRICT JUDGE

Copies to
Counsel of Record

**United States District Court
MIDDLE DISTRICT OF FLORIDA**

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 88-1636-Civ-T-15A

IN THE MATTER OF THE COMPLAINT OF
BOCA GRAND CLUB, INC. FOR
EXONERATION FROM OR LIMITATION
OF LIABILITY AS OWNER OF A 16'
PRINDLE CATAMARAN SAILING VESSEL,
HULL NO. SUR06214M82E

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Boca Grande's Motion for Summary Judgement as to the claims of Florida Power and Light Company is GRANTED and both the indemnity and contribution claims brought by Florida Power and Light Company, Inc. against Boca Grande Club, Inc. are barred by Boca Grande's settlement with the estate of the decedents.

March 27, 1992
Date

David L. Edwards
Clerk
/s/ _____
(By) Deputy Clerk

United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

No. 92-2391

District Court No. 88-1636-CIV

IN THE MATTER OF THE COMPLAINT
OF BOCA GRANDE CLUB, INC., for exon-
eration from or limitation of liability as owner
of a 16' Prindle catamaran sailing vessel hull
no. SUR06214M82E,

Plaintiff-
Counterclaim defendant-
counterclaim Plaintiff-
Appellee,

versus

ALAN POLACKWICH, ROBERT POLACK-
WICH, JONATHAN RICHARDS, ALPHON-
SUS J. POLACKWICH, and ELEANOR A.
POLACKWICH,

Defendants-
Counterclaim Plaintiffs,

STEPHANIE POLACKWICH, as personal
Representative of the Estate of
Jonathan Richards,

Defendant-
Counterclaim Plaintiff-
Crossclaim Defendant,

O'DAY CORPORATION,

Defendant-
Counterclaim Plaintiff
Crossclaim Plaintiff-
Crossclaim Defendant,

FLORIDA POWER & LIGHT COMPANY, INC.,

Defendant-
Counterclaim Plaintiff-
Crossclaim Defendant-
Crossclaim Plaintiff-
Counterclaim Defendant-
Appellant.

Appeal from the United States District Court for the Middle District of Florida

Before TJOFLAT, Chief Judge, CARNES, Circuit Judge, and
BRIGHT*, Senior Circuit Judge.

JUDGMENT

This cause came to be heard on the transcript of the record
from the United States District Court for the Middle District of
Florida, and was argued by counsel;

UPON CONSIDERATION WHEREOF, it is now hereby
ordered and adjudged by this Court that the judgment of the said
District Court in this cause be and the same is hereby VACATED;
and that this cause be and the same is hereby REMANDED to said
District Court for further proceedings in accordance with the opin-
ion of this Court;

It is further ordered that each party bear their own costs on
appeal.

*Honorable Myron H. Bright, Senior U.S. Circuit Judge for the
Eighth Circuit, sitting by designation.

Entered: May 12, 1993
For the Court: Miguel J. Cortez, Clerk
By: /s/Karleen McNabb
Deputy Clerk

ISSUED AS MANDATE: JULY 15, 1993

BOCA GRANDE CLUB, INC.
v.
POLACKWICH

IN THE MATTER OF THE COMPLAINT
 OF BOCA GRANDE CLUB, INC., for exone-
 ration from of limitation of liability as owner
 of a 16' Prindle catamaran sailing vessel hull
 no. SUR06214M82E,

Plaintiff-
 Counterclaim defendant-
 Counterclaim plaintiff-
 Appellee,

versus

ALAN POLACKWICH, ROBERT POLACK-
 WICH, JONATHAN RICHARDS, ALPHON-
 SUS J. POLACKWICH, and ELEANOR A.
 POLACKWICH,

Defendants-
 Counter claim plaintiffs,

STEPHANIE POLACKWICH, as personal
 representative of the Estate of
 Jonathan Richards,

Defendant-
 Counterclaim Plaintiff-
 Crossclaim Defendant,

O'DAY CORPORATION,

Defendant-
 Counterclaim Plaintiff
 Crossclaim Plaintiff-
 Crossclaim Defendant,

FLORIDA POWER & LIGHT COMPANY, INC.,
 Defendant-

Counterclaim Plaintiff-
 Crossclaim Defendant-
 Crossclaim Plaintiff-
 Counterclaim Defendant-
 Appellant.

No. 92-2391
United States Court of Appeals,
Eleventh Circuit.

May 12, 1993.

Appeal from the United States District Court
for the Middle District of Florida,
William J. Castagna, Judge.

Before TJOFLAT, Chief Judge, CARNES, Circuit Judge, and
 BRIGHT*, Senior Circuit Judge.

PER CURIAM:

In this case, the district court, invoking the settlement bar rule suggested by *Self v. Great Lakes Dredge & Dock Co.*, 832 F.2d 1540 (11th Cir. 1987), *cert. denied*, 486 U.S. 1033, 108 S.Ct. 2017, 100 L.Ed.2d 604 (1988), rejected Florida Power & Light Company's (FP & L's) claim for contribution against Boca Grande Club, Inc. (Boca Grande) and gave Boca Grande summary judgement. After judgement was entered and this appeal was taken, *Great Lakes Dredge & Dock Co. v. Tanker Robert Watt Miller*, 957 F.2d 1575 (11th Cir.), *cert. denied*, —U.S.—, 113 S.Ct. 484, 121 L.Ed.2d 388 (1992), concluded that the issue of contribution was not before the court in *Self*, and held that, under maritime law, a tortfeasor is not precluded from seeking contribution from a joint tortfeasor who has settled. *Id.* at 1578, 1582-83. Accordingly, we must vacate the district court's ruling and remand the case for further proceedings. In doing so, we do not pass on Boca Grande's

argument that we should affirm the district court's summary judgment because, on the record before us, FP & L is not entitled to contribution.

VACATED and REMANDED for further proceedings.

* Honorable Myron H. Bright, Senior U.S. Circuit Judge for the Eighth Circuit, sitting by designation.

A True Copy - Attested:
Clerk, U.S. Court of Appeals,
Eleventh Circuit

By: _____
Joyce L. Pope
Deputy Clerk
Atlanta, Georgia